

Policy and Procedures Keweenaw Bay Ojibwa Community College

Title IX Policy and Procedures

Policy:

Keweenaw Bay Ojibwa Community College will address all incidents of sex discrimination and sexual harassment reported to the KBOCC Title IX Coordinator in compliance with the Higher Education Opportunity Act, the Clery Act, and Title IX of the Education Amendments of 1972, as amended. This policy informs all prospective students, current students, and all KBOCC employees of college policies and procedures regarding sex discrimination and sexual harassment to which all students, members of the faculty, and non-faculty personnel are expected to adhere during their time at KBOCC. In addition, comprehensive information is provided regarding the reporting of sex discrimination and sexual harassment and avenues to seek immediate assistance.

Purpose:

Keweenaw Bay Ojibwa Community College (KBOCC) seeks to create a positive educational environment on and off campus through our academic programs, services, activities, policies and procedures aimed at providing protection against sex discrimination and harassment. To that end, KBOCC condemns discrimination in its education programs and activities based on sex or gender, sexual orientation, gender identity or expression, sexual harassment, sexual violence, domestic violence, dating violence, and stalking.

Definitions

KBOCC defines sex discrimination and sexual harassment broadly to include any of three types of misconduct on the basis of sex (or gender), all of which jeopardize the equal access to education that Title IX is designed to protect:

- (1) Any instance of quid pro quo harassment by a school's employee;
- (2) Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access;
- (3) Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Offenses prohibited under KBOCC's policy include, but are not limited to (A) sex discrimination, (B) sexual harassment, (C) sexual violence to include non-consensual sexual contact, non-consensual sexual intercourse, sexual coercion, domestic/dating violence, stalking, and sexual exploitation.

Definitions of Prohibited Conduct Under this Policy

- A. **Sex Discrimination:** includes sexual harassment and is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education, or institutional benefits, on account of sex or gender (including sexual orientation, gender identity, and gender expression discrimination). It may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

- B. **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, including Rape, Fondling, Incest, and Statutory Rape as defined in this Policy.
- C. **Rape** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- D. **Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental Incapacity
- E. **Incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- F. **Statutory Rape** means sexual intercourse with a person who is under the statutory age of consent.
- G. **Stalking** means engaging in a Course of Conduct directed at a specific person that would cause a Reasonable Person to fear for his or her safety or the safety of others; or suffer Substantial Emotional Distress.
- H. **Advisor:** Parties may have an advisor who serves in a limited role during the investigation of a Formal Complaint. During the investigation phase of the grievance process, advisors may review the investigation report and attend meetings with their party. Advisors must be provided to parties in a live hearing that adjudicates an allegation of sexual harassment. In the hearing, advisors are responsible for asking questions of other parties or witnesses. In addition to participating in the hearing, the advisor may meet with their complainant or respondent and review the investigative report and any information or evidence gathered to prepare relevant questions for the hearing. Parties may choose their own advisor, which can be a trained KBOCC Title IX Advisor or an advisor of their choice not affiliated with KBOCC, including but not required to be an attorney.

- I. **Business Day** means any weekday not designated by KBOCC as a holiday or administrative closure day. When calculating a time period of business days specified in this policy, the business day of the event that triggers a time period is excluded.
- J. **Decision Maker(s)** are responsible for conducting the live Title IX hearing to adjudicate allegations of sexual harassment against students, faculty, or staff and/or reviewing appeals of the hearing or dismissal of a formal complaint. During live hearings, the decision maker(s) is responsible for ensuring that it is conducted in an orderly manner, controls the conduct of all participants and attendees of the hearing, determines relevance of cross-examination questions, and renders a written determination regarding the responsibility of the respondent's alleged conduct charges in an impartial, neutral, and objective manner. During the hearing, this responsibility may fall to one individual or a panel of individuals. Title IX decision makers must be trained in Title IX regulations and require annual training. KBOCC may use an outside independent contractor as a decision maker.
- K. **Disciplinary Sanctions** are imposed only after a finding of responsibility through the grievance process or an agreement through the informal resolution process.
- L. **Education Program or Activity** includes locations, events, or circumstances over which KBOCC exercises substantial control over both the respondent and the context in which the sexual harassment occurs. This includes conduct that occurs on KBOCC property, during any KBOCC activity, or in any building owned or controlled by a student organization that is officially recognized by KBOCC.
- M. **Formal Complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that KBOCC investigate the allegation of sexual harassment.
- N. **Official with Authority** means an individual who has the authority to institute corrective measures and is required to report Sexual Harassment to the Title IX Coordinator. Officials with Authority include: Tashina Emery, Title IX Co-Coordinator, B. Louise Virtanen, Dean of Instruction, and Lori Ann Sherman, President.
- O. **Remedies** are designed to restore or preserve equal access to KBOCC's Education Program or Activity. Remedies may include, but are not limited to, the same individualized services as supportive measures; however, remedies need not be nondisciplinary or non-punitive and need not avoid burdening the respondent.
- P. **Title IX Investigator** Formal complaints of sexual harassment under Title IX must be properly investigated. Investigators are neutral and impartial fact-finders who gather evidence regarding an allegation against students, faculty, or staff. It is the investigators responsibility to adhere to prescribed timelines. The investigators are responsible for completing an investigative report at the conclusion of the investigation that fairly summarizes all relevant evidence and information gathered during the investigation. Title IX investigators are required to be trained annually under the regulations.

- Q. **Confidential Employee** means an individual who will not report any information about an incident to the Title IX Coordinator without the complainant's permission. Counselors in the Behavioral Health Department and KBOCC Employees Assistance Program (EAP) counselors are confidential employees.
- R. **Substantial Emotional Distress** means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.
- S. **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sex discrimination, sexual violence or sexual harassment. Complainants and respondents are referred to collectively as "parties" throughout this policy.
- T. **Respondent:** an individual who has been reported to be the alleged perpetrator of conduct that could constitute sex discrimination, sexual violence or sexual harassment. Complainants and respondents are referred to collectively as "parties" throughout this policy.
- U. **Formal complaint:** a document filed by a complainant or signed by the Title IX Coordinator alleging sex discrimination or sexual harassment against a respondent and requesting that the school investigate the allegation of sex discrimination or sexual harassment and stating the date, time, place, name(s) of person(s) involved (e.g., the accused, witnesses) and sufficient detail to make a determination regarding basic elements of the formal complaint process. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
- V. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to KBOCC's Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or KBOCC's educational environment, or deter sex discrimination, sexual violence and sexual harassment. Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- W. **Course of Conduct** means two or more acts, including, but not limited to, acts in which the individual 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.

- X. **Incapacitation** means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitated is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication. A person violates this policy when they engage in sexual activity with another person who is incapacitated and a reasonable person in the same situation would have known that the person is incapacitated. Incapacitation can be voluntary or involuntary. Signs of incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.
- Y. **Reasonable Person** means a reasonable person under similar circumstances and with similar identities to the victim.

1. Consent is informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity.
2. It is the responsibility of each person to ensure they have consent from the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision maker(s) will consider all of the facts and circumstances the Respondent knew, or by a reasonable person standard, should have known at the time. In particular, the

Respondent's belief is not a valid defense where:

1. The Respondent's belief arose from the Respondent's own intoxication or recklessness;
2. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or

3. The Respondent knew, or by a reasonable person standard should have known at the time, that the Complainant was unable to knowingly and willingly consent because the Complainant was incapacitated, in that the Complainant was:
 - asleep or unconscious
 - involuntarily restrained,
 - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication, and/or
 - unable to communicate due to a mental or physical condition

Procedure:

When a sex discrimination, sexual violence or sexual harassment incident is reported to a KBOCC Employee or to the KBOCC Title IX Coordinator, said report charges KBOCC with actual knowledge and triggers KBOCC's response obligations as described in the institutional action section below.

Scope of the Policy

KBOCC must respond when it has actual knowledge of an incident of sex discrimination, sexual violence and/or sexual harassment which occurs in the United States, and is in KBOCC's education program or activity. Education program or activity includes locations, events, or circumstances over which the school exercises substantial control over both the respondent and the context in which the discrimination or harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus, including online instruction.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

Individuals are responsible for immediately reporting any knowledge or information concerning sex discrimination, sexual violence or sexual harassment to the KBOCC Title IX Coordinator identified in this policy, whether committed on-campus, or off-campus where KBOCC has control over the respondent or the context of the harassment.

KBOCC encourages alleged victims of sexual harassment to talk with a counselor. Different programs within the scope of KBOCC's resources are available on-campus including:

- **KBOCC Behavioral Health Counselor**

- **KBOCC Employees** are required to report all the details of an incident (including the identities of both the complainant and respondent) to the Title IX Coordinator. A report to KBOCC employees (called “responsible employees”) constitutes a report to KBOCC and places KBOCC on actual notice to take appropriate steps to address the situation.

Compliance with this policy does not constitute a violation of the Family Educational Rights and Privacy Act (FERPA). For the purpose of this policy, the outcome of a disciplinary proceeding means only the institution’s final determination with respect to the alleged sex discrimination, sexual violence or sexual harassment offense and any sanction that is imposed against the respondent. This policy also applies to retaliation by KBOCC or any person against any other person when for the purpose of interfering with Title IX rights, or because the person has participated or refused to participate in any manner in a proceeding under Title IX.

Assistance Following an Incident of Sexual Harassment

- **Immediate Assistance:**
Persons who have complaints of sexual harassment may file their complaints with the Title IX Coordinator (Amanda Nordstrom) located in the KBOCC Wabanung Campus, 770 N. Main St., L’Anse, MI 49946, in room #111, phone number 906-524-8111, or email amanda.nordstrom@kbocc.edu.

If the incident is a sexual assault, seek immediate medical attention. Do not change clothing, shower, bathe, brush teeth or douche. Delay the above and going to the bathroom (if possible) until you are examined as this preserves evidence of the assault. Medical attention should be accessed at a local hospital.

Hospital Name	Phone Number	Location
Baraga County Memorial Hospital	906-524-6111	L’Anse
Donald A. LaPointe Health Center	906-353-8100	Baraga
Portage Health System	906-483-1100	Hancock
UP Health System-Bell	906-486-4431	Ishpeming

We encourage you to seek emotional support. When you are ready to talk about this issue, tell someone you trust. If you would like to bring a friend or family member to speak to someone on campus, you will be fully supported.

An assault should be reported directly to a law enforcement officer, and college officials will aid in facilitating this process. Filing a police report will ensure that a complainant of sexual violence receives the necessary medical treatment and tests, at no expense to the

complainant to the extent provided for by Michigan law, and provide the opportunity for collection of evidence helpful in prosecution, which cannot be obtained later.

- **Ongoing Assistance:**
In order to ensure the safety and well-being of the complainant, KBOCC may take interim measures such as changing work schedules, academic schedules, addressing transportation issues, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring), leaves of absence, campus escort services, or similar measures. In addition, while an investigation is pending KBOCC may initiate a “no contact order” between the parties that carries a sanction of expulsion if violated.

KBOCC does offer internal counseling options. On-campus you may contact Terry DesRocher-Lerma, Behavioral Health: Counseling Office Rm. 408 phone: 906-524-8408

Several service organizations in Michigan have provided telephone numbers and made available other services for students, faculty, staff and campus community members. KBOCC Dean of Student Services will assist any interested person in contacting these agencies.

- **Additional Support Services:**
Keweenaw Bay Indian Community Office on Violence against Women – 906-353-4599
DIAL Help - 906-482-HELP. Crisis Text: 35NEEDS. Baraga County Shelter Home
Crisis Line: 906-524-7079.

Title IX Coordinator and Staff

- Title IX Coordinator has primary responsibility for overseeing the process of coordinating KBOCC’s compliance efforts, receiving complaints, investigations, hearing, sanctions, appeals, and education and training associated with this policy. To file a complaint or submit questions concerning actions governed by this policy contact the Title IX Coordinator (Amanda Nordstrom) located in the KBOCC Wabanung Campus, 770 N. Main St, L’Anse, MI 49946 room #111, phone: 906-524-8111 or email: amanda.nordstrom@kbocc.edu
- Title IX Co-Coordinators have the secondary responsibility and assist in the duties of the Title IX Coordinator. Deputy Title IX Officers include the Financial Aid Director (Tashina Emery) located in the KBOCC Wabanung Campus, 770 N. Main St, L’Anse, MI 49946 room #304, phone: 918-549-2803 or email: temery@kbocc.edu
- Title IX Investigators may include but not be limited to KBOCC security officers and staff. The primary responsibility of the investigator is to collect statements and any evidence directly related to any allegations of a Title IX policy violation as directed by the Title IX Coordinator. Investigators will receive appropriate Title IX and trauma informed training.
- Title IX Hearing Officer may include a KBOCC administrator or external legal counsel. The primary responsibility of the hearing officer will be to ensure both parties receive

due process in the event allegations of a Title IX policy violation are directed to a hearing by the Title IX Coordinator. Hearing Officers will receive appropriate Title IX and trauma informed training.

- Title IX Hearing Member may include KBOCC faculty or staff members. The primary responsibility of the hearing member is to listen to both sides of the complaint. Each hearing member will evaluate the information being provided by both parties to make a decision whether or not a Title IX policy violation took place. Hearing members will receive appropriate Title IX training.

KBOCC Officers and Designees

- The designation of a KBOCC official responsible for prescribed actions shall automatically include the official's designee in instances where an official is unable, unavailable or has concluded that the official may have a conflict of interest that causes the official to recuse from involvement in the matter. The official's designee shall have the same authority as the official in matters involving this policy.

Z.

- AA. Employees who are subject to unwelcome conduct of a sexual nature are encouraged to report the incident(s) to the Title IX Coordinator or any employee. Employees who witness or receive reports of unwelcome conduct of a sexual nature are required to report the incident(s) or reports received to the Title IX Coordinator.

Reporting

A. Mandatory Reporting

All KBOCC employees are responsible for taking all appropriate action to prevent sex discrimination, sexual violence or sexual harassment, to correct it when it occurs, and all KBOCC employees must promptly report it to the Title IX Coordinator. Failure to do so may result in disciplinary action up to and including termination. All KBOCC employees are considered responsible employees with a duty to report any incident to the Title IX Coordinator.

B. Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with counselors, health service providers, victim services advocates, community resources, local or state assistance agencies, or members of the clergy who are permitted by law to maintain confidentiality (except in extreme cases of immediacy of threat or danger or abuse of a minor or elder). The Jeanne Clery Act requires the college to annually report statistical information about crime on campus including sex offenses. Confidential resources must submit anonymous statistical

information for timely warning and Clery Act reporting. Identifying information is not reported to or contained in the Clery report. If a reporting party is unsure of a resource's ability to maintain confidentiality, the reporting party is advised to ask them before talking to them. All forms of sex discrimination, sexual violence and sexual harassment should be reported, no matter the severity. KBOCC should be made aware of possible threats to the campus community in order to issue timely warnings.

C. Reporting to the Police

KBOCC strongly encourages anyone to report sexual violence and any other criminal offenses to the police. This will allow the gathering of information and evidence. The information and evidence will preserve future options regarding criminal prosecution, College disciplinary actions and/or civil actions against the respondent.

In addition to campus reporting, reports may also be made directly to the police, especially if a crime is or may be involved, by calling the following numbers:

- Emergency 9-1-1

Local Police Departments

Campus	Phone Number	Location
Keweenaw Bay Tribal Police	(906) 353-5125	Baraga
Michigan State Police	(906) 475-9922	Negaunee
Baraga Village Police	(906) 353-7181	Baraga
L’Anse Village Police	(906) 524-6050	L’Anse
Baraga County Sheriff	(906) 524-6100	L’Anse

D. Reporting of Student Instances

Students shall report any instances of sex discrimination or sexual harassment to any KBOCC employee and/or the Title IX Coordinator. A complaint should be filed as soon as possible. If either the complainant or the respondent is a student, the incident will be addressed through the Title IX process. The report can be made in person, by phone, mail, or email using the contact information listed for the Title IX Coordinator or by any other means that results in the Coordinator receiving the report. The report can be made any time, even during non-business hours.

Options for filing a report include:

ANONYMOUS AND THIRD-PARTY REPORTING

The Title IX Coordinator and Co-coordinator accept anonymous and third-party reports of conduct alleged to violate this policy and will follow up on such reports. The individual making the report is encouraged to provide as much detailed information as possible to allow the Title IX

Coordinator or Co-coordinator to investigate and respond as appropriate. The College may be limited in its ability to investigate an anonymous or third-party report unless sufficient information is provided.

CONFIDENTIAL REPORTING

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with counselors, health service providers, victim services advocates, community resources, local or state assistance agencies, or members of the clergy who are permitted by law to maintain confidentiality (except in extreme cases of immediacy of threat or danger or abuse of a minor or elder). The Jeanne Clery Act requires the college to report annually statistical information about crime on campus including sex offenses. Confidential resources must submit anonymous statistical information for timely warning and Clery Act reporting. Identifying information is not reported to or contained in the Clery report. If a reporting party is unsure of a resource's ability to maintain confidentiality, the reporting party is advised to ask them before talking to them.

FORMAL REPORTING

Complainants are encouraged to speak to College officials, such as the Title IX Coordinator or Co-coordinator or Keweenaw Bay Ojibwa Community College Security, to make formal reports. Complainants have the right and can expect, to have complaints taken seriously by the College when formally reported and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter as only a small group of officials who need to know will be told. Information will be shared as necessary with the investigator(s), witnesses, the respondent, and a hearing board if deemed appropriate. While this process is not confidential, the number of people with this knowledge will be kept to as few as reasonably possible to preserve a complainant's rights and privacy.

CAMPUS AND POLICE REPORTING

If someone is in immediate danger or is a victim of a crime, call 9-1-1. Some acts of discrimination and harassment may also be crimes, such as sexual assault or stalking. Besides reporting to campus security, it is strongly recommended that allegations of criminal conduct be reported to law enforcement even when it is not clear whether the conduct rises to the level of a crime. Regardless, law enforcement can assist with obtaining medical care, getting immediate law enforcement response and protection, connecting with victim advocate services and counseling support, initiating a criminal investigation as appropriate and answering questions about the criminal process.

After receiving a report or notice of an incident, the Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. A complainant's wishes with respect to whether the KBOCC investigates should be respected unless the Title IX Coordinator

determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

KBOCC will promptly take necessary steps to protect the complainant and ensure safety as necessary, including taking interim steps before the final outcome of any investigation once a report or knowledge of sex discrimination, sexual violence or sexual harassment has occurred. Periodic updates on the status of the investigation will be provided to the complainant. If the school determines that the sexual violence occurred, KBOCC will continue to take these steps to protect the complainant and ensure his or her safety, as necessary. KBOCC will provide the complainant with any available resources, such as victim advocacy, academic support, counseling, disability services, health and mental health services, legal assistance, and assistance in reporting a crime to local law enforcement.

Written Notice of Complaint

Upon receipt of a formal complaint, KBOCC will provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview.

Written notice includes:

- a. Notice of the grievance process, including any informal resolution process;
- b. Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;
- c. A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- d. Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- e. Notice that knowingly making false statements or providing false information in the grievance process is a violation of the code of conduct and subject to disciplinary action.

Investigation

The Title IX Coordinator will make a determination to begin a formal investigation of sex discrimination or a sexual harassment incident which will lead to an institutional action. The coordinator will be available to explain to both parties the process and to notify them in writing of the receipt of a complaint and the actions KBOCC will take. The burden of gathering evidence and burden of proof must remain on KBOCC, not on the parties.

An investigation will be conducted by a KBOCC Title IX official. This investigation will include:

- Meeting personally with the complainant, (unless extraordinary circumstances prevent a personal meeting),
- Meeting personally with the respondent, (unless extraordinary circumstances prevent a personal meeting),

- Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made,
- Collecting any physical evidence,
- Meeting personally with any witnesses, (unless extraordinary circumstances prevent a personal meeting with one or more witnesses), and
- Reviewing any documentary evidence.

The investigation of complaints will be adequate, reliable and impartial. The investigation process can take up to 60 days. When investigating a complaint and throughout the complaint process, KBOCC must:

- (1) ensure that the burden of proof and of gathering evidence rests on KBOCC rather than the parties;
- (2) provide an equal opportunity for the parties to present witnesses and evidence;
- (3) not restrict either party's ability to discuss the allegations or gather and present evidence;
- (4) provide the parties with the same opportunities to have others present during interviews or related proceedings, including an advisor;
- (5) provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose, and location of any investigative interview, hearing or other meeting with enough time to allow the party to prepare and participate;
- (6) provide both parties and their advisors an equal opportunity to review all evidence directly related to the allegations in the formal complaint (both exculpatory and inculpatory) at least 10 days prior to the completion of the final investigation; and
- (7) prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to both parties and their advisors for review and written response at least 10 days before a hearing or determination of responsibility. KBOCC will determine if a Title IX hearing is necessary.

No information protected by a legal privilege (e.g., attorney/client, doctor patient) may be requested, sought for, question about or used in any way during the investigation, unless the person holding the privilege has waived it.

If it is determined that KBOCC will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing date.

Mandatory or Permissive Dismissal

Mandatory dismissal must occur when determined in the course of the investigation that allegation in a formal complaint:

- (1) did not occur in KBOCC's program or activity;
- (2) did not constitute sex discriminate, sexual violence or sexual harassment as defined above; or
- (3) did not occur within the US.

Both parties must receive written notice of a mandatory dismissal and reasons.

Permissive dismissal may occur at any time during the investigation or hearing when:

- (1) a complainant notifies the Title IX Coordinator in writing that they would like to withdraw;

- (2) the respondent is no longer enrolled or employed by KBOCC; or
- (3) specific circumstances prevent KBOCC from gathering evidence sufficient to reach a determination.

Both parties must receive written notice of a permissive dismissal and reasons.

A decision to dismiss a complaint, whether mandatory or permissive, may be appealed as provided below.

KBOCC may still address allegations of misconduct under the Student Code of Conduct.

Institutional Action

- A. Mediation is a method of informal resolution. Informal resolutions are prohibited unless a formal complaint of sexual harassment is filed. Mediation may include conflict resolution or a restorative agreement between the parties with a trained Title IX Officer presiding over the mediation. Participation in mediation is not mandatory, but will only take place with the consent of both parties involved. Mediation may only be used:
 - 1. Prior to a Notice of hearing being issued.
 - 2. When a trained Title IX Officer determines this is a suitable option for resolving the concern, and both the Complainant and Respondent agree to use the process.
 - 3. When the complaint does not involve sexual violence as defined above.
 - 4. When both parties acknowledge receipt of written notice of their rights under this policy and both parties provide written, voluntary consent.
 - 5. Mediation is not available when the complaint alleges a KBOCC employee harassed a student.

Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted. However, either the Complainant or the Respondent may terminate mediation at any time prior to the entry of a voluntary resolution and proceed with the Title IX hearing. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Title IX Coordinator to a Title IX Hearing. No offers to resolve the conflict that were made or discussed during the informal voluntary resolution process may be introduced during the Title IX Hearing.

- B. Title IX Hearing

The Title IX Coordinator will determine if a hearing is necessary; mediation is never appropriate in sexual violence cases. If it is determined that KBOCC will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing date, the alleged policy violation and issued a notice to appear at the hearing. The written notice will be hand delivered directly to the student(s) or mailed to the local address as filed in the Registrar's Office. Students are responsible for providing and maintaining a current local address in the Registrar's Office.

The hearing members shall include at least one trauma trained individual in sex discrimination or sexual harassment adjudication to include a trained Title IX Officer as the hearing officer and three members of faculty and staff as hearing members. The

selection of the hearing members will be made by the Title IX Coordinator. Criteria for the hearing committee will include: 1) have received all appropriate training, 2) not a current instructor of either party involved, 3) have no previous substantive or direct knowledge of the incident, and 4) have no other perceived conflict of interest as determined by interview process with the Title IX Coordinator.

Description of the duties of the Title IX Hearing Members will include but not limited to the following:

- Read and understand the Title IX Policy and Procedures, which include the hearing process.
- Read and understand all of the information of the Title IX case provided by the Coordinator prior to the hearing as part of a hearing packet.
- Read and understand the procedures of the Title IX hearing provided by the Coordinator prior to the hearing as part of a hearing packet.
- Have a clear understanding of the incident in question before going into deliberations for a decision.
- Decide the outcome (majority vote) and sanctions if needed based on the information presented, hearing notes, and the KBOCC Title IX Policy.
- Provide copies of notes, if made, to the hearing officer. The hearing officer will inform the parties of the decision at the hearing and send a letter as described in this policy.

Complainant's Rights:

- Be given a written explanation of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. The advisor will be allowed to cross-examine witnesses by asking relevant questions that challenge the other party's denials. If necessary, KBOCC will provide an advisor free of charge for the sole purpose of cross-examining the other party's witnesses. Students must provide KBOCC with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing (if the advisor is an attorney; KBOCC's attorney will also be present for the hearing);
- Be given a timely hearing;
- Exclude any evidence of the victim's past sexual history from discussion during the hearing unless the evidence is offered to prove (1) someone other than the respondent committed the crime, or (2) the evidence involves prior sexual behavior between the complainant and the respondent and is offered to prove consent. The past sexual history of the victim with persons other than the respondent shall be presumed irrelevant;
- Exclude any evidence protected by legal privilege (e.g., attorney/client or doctor/patient privilege) unless the person holding the privilege has waived that privilege;

- Clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual harassment;
- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the school community;
- Written notification of any external counseling services that may be available;
- Written notification of options for changing academic, living, transportation, and work site situations if reasonable;
- Written notification of an avenue for appeal.

Respondent's Rights:

- Be given written notice of the allegations and the hearing process ;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Have no violation presumed until found responsible;
- Be given a timely hearing;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. The advisor will be allowed to cross-examine witnesses by asking relevant questions that challenge the other party's allegations. If necessary, KBOCC will provide an advisor free of charge for the sole purpose of cross-examining the other party's witnesses. Students must provide KBOCC with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing (if the advisor is an attorney, KBOCC's attorney will also be present for the hearing);
- Be allowed to introduce alleged *only* if the evidence is offered to prove (1) someone other than the respondent committed the crime, or (2) the evidence involves prior sexual behavior between the complainant and the respondent and is offered to prove consent.
- Exclude any evidence protected by legal privilege (e.g., attorney/client or doctor/patient privilege) unless the party holding the privilege has waived that privilege;
- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the school community;
- Written notification of any external counseling services that may be available;
- Written notification of options for changing academic, living, transportation, and work site situations, if reasonable;
- Written notification of an avenue for appeal.

The hearing will include opening statements, each party's evidence and witnesses, and closing statements. Complainants/respondents are permitted to be present during the disciplinary hearing (except during deliberations of the panel).

Complainants and respondents are permitted to make statements, present witnesses and present evidence during the hearing which has been previously collected and approved during the investigation process. Complainants and respondents *are not* permitted to cross-examine the other party directly.

If a party or witness chooses not to appear for the hearing, or refuses to answer cross-examination questions, any statements of those individuals will be excluded from the decision making process and only evidence unrelated to those statements will be considered. For purposes of the final determination, no inferences will be drawn from the fact that a party or witness did not come to the hearing or submit to cross-examination.

Witnesses and evidence need to be directly related to the incident. The standard of proof used in KBOCC Title IX Hearings is the preponderance of the evidence, which means the determination to be made is whether it is more likely than not a violation occurred.

In-person hearings are preferred, but videoconference hearings may be conducted if the hearing officer determines that the health, safety and welfare of all participants is better served by the alternate hearing mode.

Outcome

If it is determined under the preponderance of evidence standard that the respondent is not responsible for a Sex Discrimination Sexual Violence or Sexual Harassment policy violation the complaint will be dismissed. The parties will be provided with written notice of the determination and a statement of the parties' right to appeal along with a description of KBOCC's appeal procedures as well as the basis for taking an appeal.

If it is determined under the preponderance of evidence standard that the respondent is responsible for a Sexual Harassment policy violation, a written determination will be issued which includes the following:

1. The portion of the KBOCC policy which was violated;
2. A description of the procedural steps taken to arrive at that determination;
3. A findings of fact section;
4. A section that draws conclusions after applying the facts to the applicable policy section;
5. A statement and rationale for the ultimate determination of responsibility;
6. A statement of any disciplinary sanctions that KBOCC will impose on the respondent, in such a case the following sanctions will be considered. The listing of sanctions below is not intended to be exclusive; in addition, sanctions may be imposed singularly or in combination when a violation of this policy is found:

Sexual Discrimination (includes gender discrimination) may include the following sanctions if the respondent is found responsible.

- Restriction – A limitation on a student's privileges for a period of time and may include but not be limited to the denial of the use of facilities or access to parts of campus, denial of the right to represent KBOCC, or denial of participation in extracurricular activities.

- Service Project – Community service or an education class or project beneficial to the individual and campus or community.
- Probation Level I – A specified period of time during which the student is placed on formal notice that he/she is not in good social standing with KBOCC and that further violations of regulations will subject him/her to suspension or expulsion from the KBOCC.
- Suspension – If warranted by the severity of the incident, exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from KBOCC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Dean of Student Services. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record. Any refund of tuition or fees will be subject to KBOCC's normal withdrawal policy.
- Expulsion – Termination of student status for an indefinite period. The conditions for readmission, if any, shall be stated in the hearing outcome letter. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record. Any refund of tuition or fees will be subject to KBOCC's normal withdrawal policy. Expulsion should be reserved and used only in cases involving the most severe instances of misconduct.

Sexual Harassment may include the following sanctions on the student(s) found responsible.

- Restriction – A limitation on a student’s privileges for a period of time and may include but not be limited to the denial of the use of facilities or access to parts of campus, denial of the right to represent KBOCC.
- Service Project – Community service or an education class or project beneficial to the individual and campus or community.
- Behavioral Change Requirement – Required activities including but not limited to, seeking academic counseling, substance abuse assessment, decision making class, writing a reflection paper, etc.
- Probation Level II – Adds to Level I the stipulation that students are prohibited from participating in any extracurricular activities not directly associated with academics (e.g., student organizations/clubs/associations, leadership positions, etc. Students must apply to get off Conduct Probation Level II by submitting documentation of their significant proactive efforts to become good citizens of the community and engage in responsible, productive behavior.
- Suspension – If warranted by the severity of the incident, exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from KBOCC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Dean of Student Services. Conditions to conclude a suspension and reinstatement process will be stated in the written notification.

Notation on the transcript is not made; however, a permanent record of the action is maintained in the student's record. Any refund of tuition or fees will be subject to KBOCC's normal withdrawal policy.

- Expulsion – Termination of student status for an indefinite period. The conditions for readmission, if any, shall be stated in the hearing outcome letter. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student's record. Any refund of tuition or fees will be subject to KBOCC's normal withdrawal policy. Expulsion should be reserved and used only in cases involving the most severe instances of misconduct.

Sexual Violence may include the following sanction on the student(s) found responsible.

- Expulsion – Termination of student status for an indefinite period. The conditions for readmission, if any, shall be stated in the hearing outcome letter. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student's record. Any refund of tuition or fees will be subject to KBOCC's normal withdrawal policy. Expulsion should be reserved and used only in cases involving the most severe instances of misconduct.

7. A statement of whether the complainant will be provided with any remedies; and
8. A statement and rationale for any remedies for the complainant addressing how those remedies will restore or preserve equal access to education.

Both parties will be notified of the outcome in writing by certified mail or other agreed upon form of notice within five business days after the hearing at the same time. Both parties have the right to appeal the decision reached through the hearing proceedings within five days after the hearing.

Appeal Procedures

An appeal is not a new hearing, but is a review of the record of the original hearing. It serves as a procedural safeguard for the student. The burden of proof shifts from KBOCC to the student(s) found responsible for the policy violation. The student must show one or more of the listed grounds for an appeal.

- A. Appeals must be submitted in writing to the President within five (5) working/school days of receiving the decision. Failure to file an appeal within the prescribed time constitutes a waiver of any right to an appeal.
- B. The appeal must cite at least one of the following criteria as the reason for appeal and include supporting argument(s):
 1. The original hearing was not conducted in conformity with prescribed procedures and substantial prejudice to the complainant or the respondent resulted.
 2. The evidence presented at the previous hearing was not "sufficient" to justify a decision against the student or group.
 3. New evidence which could have substantially affected the outcome of the hearing has been discovered since the hearing. The evidence must not have been available at the

time of the original hearing. Failure to present information that was available is not grounds for an appeal.

4. The sanction is not appropriate for the violation. This provision is intended to be utilized when a determined sanction is inherently inconsistent with KBOCC procedures or precedent. Simple dissatisfaction with a sanction is not grounds for overturning a sanction under this provision.

- C. The President will review the record of the original hearing, including documentary evidence. It is the President's discretion to convert any sanction imposed to a lesser sanction, to rescind any previous sanction, or to return a recommended sanction to the original hearing committee for review/or reconsideration. If there is new evidence (unavailable at the time of the hearing through no fault of the parties) which is believed to substantially affect the outcome, or evidence presented at the previous hearing(s) was "insufficient" to justify a decision against the student or group, or a finding that a substantial procedural error resulting in prejudice occurred, the matter may be remanded to either a rehearing of the entire matter or reconsideration of specific issues. If remanded to the original hearing committee, either or both students may appeal the committee's decision to the President and the procedures set out above shall control the appeal.

- D. The final decision will be communicated in writing by the President to the appealing student(s). The decision will be communicated within ten (10) working/school days of receiving the written recommendation. Both parties will be notified of the final outcome of the appeal.

- E. The decision of the President on appeal shall be final.

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Recordkeeping Protocol

KBOCC will document all reports and complaints of sex discrimination and provide copies of those reports to the Title IX Coordinator. KBOCC Title IX Office will maintain a secured electronic file system of all Title IX cases, reports, and complaints by academic year. The cases will include all information related to the individual case, which includes but is not limited to the initial complaint, letters sent to all parties, response from the respondent, immediate assistance, investigation notes, mediation agreement if applicable, notice of a hearing, committee selection, training received by selected committee members, hearing notes, hearing decision, written notice of the outcome, and any recordings made of the hearing or in the course of the investigation.

The time period to maintain the case records will be no less than seven (7) years from the date of KBOCC's final action or decision (whether through report of the investigation, mediation, or hearing). The confidential reporting of the number of incidents and types will be sent to KBOCC Security for the preparation of the Annual Crimes Report.

Prevention and Education

A. Education

KBOCC requires all employees to take educational-training courses on an annual basis. Employees may be required to be recertified on demand. Failure to have a certification of this required training may result in appropriate disciplinary action. Additional in-person trainings are also offered periodically and on request.

B. Bystander Intervention

If you witness a policy violation, or behaviors that may lead to a policy violation, there are a variety of things you can do as a bystander:

- Divert the intended victim (e.g. “help me out of here; I don’t feel well”)
- Distract the perpetrator (e.g. “looks like your car is being towed”)
- Delegate to a person of authority (e.g. if at a nightclub, let the bartender/bouncer know of the situation)
- Direct, confront the perpetrator (e.g. “don’t speak to him/her in that manner; you are going to get yourself into trouble”)

C. Risk Reduction Tips

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to blame victims, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you reduce your risk of experiencing a non-consensual sexual act.

- Make your limits known as early as possible.
- Be aware of your alcohol intake. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends or colleagues and ask that they take care of you.

D. Potential Aggressor

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- **DON’T MAKE ASSUMPTIONS** about consent; about someone’s sexual availability; about whether they are attracted to you; about how far you can go; or about whether they are physically and/or mentally able to consent.
- If there are any questions or ambiguity, then you **DO NOT** have consent.

Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. You must respect the timeline for sexual behaviors with which they are comfortable.

- Don’t take advantage of someone’s drunkenness or drugged state, even if they did it to themselves.

- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size.
- Don't abuse that power. Understand that consent to one form of sexual behavior does not automatically imply consent to other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent.
- Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Training

Training on sexual misconduct: discrimination, harassment, and violence is included in KBOCC's education program.

Training for student groups and students will be conducted through a variety of presentations, student orientation, and other meetings. Informational website and brochures devoted to educating students will be presented at prevention workshops. When in-person training is neither practical nor safe, alternative modes of training shall be utilized.

Mandatory training for employees will be provided through a variety of means on sexual misconduct: discrimination, harassment, and violence and mandatory reporting through new employee orientations and other periodic training opportunities and upon request. Informational website and brochures devoted to educating employees.

Retaliation

The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual harassment or filing a sexual harassment complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in a Department of Education Office of Civil Rights' (OCR) investigation or proceeding, or KBOCC's or any other school's investigation or proceeding. Therefore, if a student, parent, teacher, sponsor coach, or other individual complains formally or informally about sexual harassment or participates in an OCR or KBOCC or other school's investigation or proceedings related to sex discrimination, sexual violence or sexual harassment, KBOCC and/or the other school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation. Individuals who, apart from official associations with KBOCC, engage in retaliatory activities will also be subject to KBOCC's policies insofar as they are applicable to third party actions.

KBOCC will take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses. Complaints of retaliation will follow the same process of investigation, hearing, and appeal.

If it is determined under the preponderance of evidentiary standard (more likely than not to have occurred) that a student is responsible for retaliation the following sanction will be imposed.

- Suspension – Exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from KBOCC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Dean of Student Services. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record. Any refund of tuition or fees will be subject to KBOCC's normal withdrawal policy.

Free Speech and Academic Freedom

Members of the KBOCC community enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution. This policy is intended to protect members of the KBOCC community from discrimination and is not designed to regulate protected speech. No provision of this policy shall be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

Availability of other Complaint Procedures

In addition to seeking criminal charges through local law enforcement, members of the KBOCC community may also file complaints with the following entities regardless of whether they choose to file a complaint under this procedure:

FEDERAL ENFORCER

The U.S. Department of Education, Office for Civil Rights (OCR) is the federal agency charged with enforcing compliance with Title IX. Individuals with complaints of this nature always have the right to file a formal complaint with the United States Department Education:

United States Department of Education
Office for Civil Rights (OCR)
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: 800.421.3481
Facsimile: 202.453.6012
TDD#: 877.521.2172
Email: OCR@ed.gov
Web: www.ed.gov/ocr