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***KBOCC Mission Statement:** As a tribal land grant institution, Keweenaw Bay Ojibwa Community College supports and uplifts all learners to achieve their goals through holistic education, while promoting Anishinaabe culture, language, and lifeways.*

Title IX Policy Prohibiting Sex Discrimination

Section 1: Introduction and General Information

1.1 Nondiscrimination Policy Statement: Keweenaw Bay Ojibwa Community College (KBOCC) does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.

1.2 Purpose: KBOCC takes all reported discrimination on the basis of sex seriously. KBOCC will promptly discipline any individuals within its control who are found responsible for violating this Policy.

1.3 Applicability:

- a. **Employees:** This Policy applies to all forms of sex discrimination including sex-based harassment, when both parties are an employee of KBOCC. This Policy also applies to all forms of sex discrimination, except sex-based harassment, when one party is an employee and another party is a student.
- b. **Students:** This Policy applies to all forms of sex discrimination involving students, except sex-based harassment.¹

1.4: Title IX Coordinator and Title IX Designees: The Title IX Coordinator is the KBOCC administrator who oversees KBOCC's compliance with Title IX. The Title IX Coordinator is responsible for the response to notifications of discrimination on the basis of sex. The Title IX Coordinator is available to discuss the grievance procedures, coordinate supportive measures, modifications related to pregnancy and related conditions, explain KBOCC's policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate other employees to facilitate these responsibilities.

Individuals may contact the Title IX Coordinator or designees with questions.

The contact information for the Title IX Coordinator and designees is as follows:

Name and Title: Lindsay Hatzis, Title IX Coordinator
Phone: 423-667-1838
Email: lindsay@icslawyer.com or titleix@kbocc.edu

¹ For allegations of sex-based harassment involving at least one student as a party, the Title IX Policy Prohibiting Sex-Based Harassment Involving a Student applies.

Name and Title: Matthew Cotter, Deputy Title IX Coordinator
Phone: 906-524-8402
Email: mcotter@kbocc.edu
Office Location: 770 N. Main St., Room 402W, L'Anse, Michigan

1.5 Communication: KBOCC will use KBOCC electronic mail (email) for purposes of communication under this Policy.

1.6 Free Speech: Constitutionally protected expression cannot be considered discrimination on the basis of sex under this policy.

1.7 Dissemination of Policy of and Notice of Nondiscrimination: KBOCC will publish the Notice of Nondiscrimination on its website and in each handbook, catalog, announcement, bulletin, and application form made available to students, parents/guardians, and employees, or which are otherwise used in connection with the recruitment of students. This posting will include a link to this policy and reporting options.

1.8 Effective Date: The effective date of this Policy is August 1, 2024. Matters that occurred prior to August 1, 2024 will be resolved using the policy and procedures in place at the time of the alleged event.

1.9 False Statements: The KBOCC Student Handbook prohibits knowingly furnishing false information to college personnel. Any student found to have knowingly furnished false information to college personnel may be subject to discipline pursuant to the Student Handbook. The KBOCC Employee Handbook prohibits the filing of false reports. Any employee found to have filed a false report may be subject to discipline pursuant to the Employee Handbook.

1.10 Amnesty: Reporting discrimination on the basis of sex and other inappropriate conduct is encouraged at KBOCC. Thus, it is imperative that parties and witnesses share information without fear of potential consequences for minor violations of the Student Handbook or Employee Handbook.

1.10.1 Amnesty for Students: KBOCC offers student parties and witnesses amnesty from minor violations of the Student Handbook that do not cause harm or place the health or safety of any other person at risk. However, students may be responsible for other, more serious conduct that does harm or place the health or safety of any other person at risk. After granting amnesty, KBOCC may include educational opportunities for students in lieu of a finding of responsibility or punitive sanctions with the student. This Section does not apply to reports to the police; rather, it applies only to discipline for violations of KBOCC's Student Handbook.

1.10.2 Amnesty for Employees: KBOCC offers employee parties and witnesses amnesty from violations of the Employee Handbook that would not result in immediate dismissal. After granting amnesty, KBOCC may include educational opportunities for employees in lieu of a finding of responsibility or punitive sanctions with the employee. This Section does not apply to reports to the police; rather, it applies only to discipline for violations of KBOCC's Employee Handbook.

1.11 Other KBOCC Policies: This Policy takes precedence over other KBOCC policies and procedures concerning discrimination on the basis of sex in the event of a conflict.

1.12: Modification and Review of this Policy: KBOCC reserves the right to modify this Policy to take into account applicable legal requirements. KBOCC will regularly review this Policy to determine whether modifications should be made.

1.13 Additional Student Handbook, Employee Handbook, or KBOCC Policy Violations: Alleged violations of the Student Handbook, Employee Handbook, and/or other policies that arise from the same events as alleged discrimination on the basis of sex under this Policy will be investigated and resolved under the grievance procedures in this Policy unless the sex discrimination has been dismissed under Section 5.4 of this Policy.

1.14 Standard of Proof: The burden rests with the KBOCC to prove that a violation of this policy occurred by a preponderance of the evidence (more likely than not).

1.15 Application: This Policy applies to all sex discrimination occurring under KBOCC's education program or activity in the United States.

Conduct that occurs under KBOCC's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by KBOCC, and conduct that is subject to KBOCC's disciplinary authority. KBOCC has an obligation to address a sex-based hostile environment under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside of KBOCC's education program or activity or outside the United States.

1.16 Prohibited disclosure of personally identifiable information: KBOCC will not disclose personally identifiable information obtained in the course of complying with this Policy and/or grievance procedures except in the following circumstances:

- (1) When KBOCC has obtained prior written consent from a person with the legal right to consent to the disclosure;
- (2) When the information is disclosed to an authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- (3) To carry out the purposes of this policy and procedure including action taken to address conduct that reasonably may constitute sex discrimination under this policy in the KBOCC's education program or activity;
- (4) As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
- (5) To the extent such disclosures are not otherwise in conflict with Title IX or this Policy when required by State or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.

Section 2: Definitions

2.1 Definitions of Prohibited Conduct Under this Policy

2.1.1 Sex-Based Harassment: A form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, that is:

(1) Quid pro quo harassment: An employee, agent, or other person authorized by KBOCC to provide an aid, benefit, or service under KBOCC's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) Hostile environment harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from KBOCC's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the complainant's ability to access KBOCC's education program or activity;

(ii) The type, frequency, and duration of the conduct;

(iii) The parties' ages, roles within KBOCC's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(iv) The location of the conduct and the context in which the conduct occurred; and

(v) Other sex-based harassment in KBOCC's education program or activity.

(3) Specific offenses: Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.

2.1.2 Sexual Assault: 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.

2.1.3 Rape²: 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.

² Rape as defined in the Uniform Crime Reporting Program (UCR) includes:

Forcible Rape: The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

2.1.4 Fondling³: 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.

2.1.5 Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

2.1.6 Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

2.1.7 Dating Violence: Violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship;

2.1.8 Domestic Violence: Felony or misdemeanor crimes committed by a person who:

- (1) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of KBOCC, or a person similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (3) Shares a child in common with the victim; or
- (4) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault with and Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

³ Fondling is referred to as Forcible Fondling in the UCR.

2.1.9 Stalking: Engaging in a course of 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.

2.1.10 Retaliation, including Peer Retaliation: Intimidation, threats, coercion, or discrimination against any person by KBOCC, a student, or an employee or other person authorized by KBOCC to provide aid, benefit, or service under KBOCC's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy, including in an informal resolution process, in grievance procedures, and in any other actions taken by KBOCC under this Policy. Nothing in this definition or this Policy precludes KBOCC from requiring an employee or other person authorized by KBOCC to provide aid, benefit, or service under KBOCC's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.

2.2 Definitions Related to Sex Discrimination: Consent, Course of Conduct, Incapacitation, Reasonable Person, Substantial Emotional Distress

2.2.1 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.

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 decisionmaker will consider all of the facts and circumstances the respondent knew, or reasonably 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 a reasonable person should have known that the complainant was unable to consent because the complainant was incapacitated, in that the complainant was:
 - asleep or unconscious;
 - unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication;

- unable to communicate due to a mental or physical condition.

2.2.2 Course of Conduct: 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.

2.2.3 Incapacitation: 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:

- (1) control over their body, is unaware that sexual activity is occurring, or
- (2) their mental, physical or developmental abilities render them incapable of making rational informed decisions.

Incapacitation 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.

2.2.4 On the Basis of Sex (Scope): Includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

2.2.5 Reasonable Person: A reasonable person under similar circumstances and with similar identities to the victim.

2.2.6 Substantial Emotional Distress: Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

2.3 Other Defined Terms

2.3.1 Working Day: Any weekday not designated by KBOCC as a holiday or administrative closure day. When calculating a time period of working days specified in this Policy, the working day of the event that triggers a time period is excluded.

2.3.2 Complainant: A student or employee of KBOCC who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or a person other than a student or employee of KBOCC who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in KBOCC's education program or activity.

2.3.3 Complaint: An oral or written request to KBOCC that objectively can be understood as a request for KBOCC to investigate and make a determination about alleged discrimination.

2.3.4 Confidential Employee:

(1) An employee of KBOCC whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this Policy, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;

(2) An employee of KBOCC whom KBOCC has designated as confidential under this Policy for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or

(3) An employee of a post-secondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee's confidential status is only with respect to information received while conducting the study.

2.3.5 Disciplinary Sanctions: Consequences imposed on a respondent following a determination under Title IX that the respondent violated KBOCC's prohibition on sex discrimination.

2.3.6 Education Program or Activity: Any academic, extracurricular, research, occupational training, or other education program or activity.

2.3.7 Impermissible Evidence: The following information must not be discussed, otherwise used, accessed or considered, even if relevant, except by KBOCC to determine whether an exception exists.

(1) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(2) A party's or witness' records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless KBOCC obtains that party's or witness' voluntary, written consent for use in KBOCC's grievance procedures; and

(3) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent

to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

2.3.8 Party: A complainant or respondent.

2.3.9 Pregnancy or Related Conditions:

(1) Pregnancy, childbirth, termination of pregnancy, or lactation;

(2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

2.3.10 Relevant: Related to the allegations of sex discrimination under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

2.3.11 Remedies: Measures provided, as appropriate, to a complainant or any other person KBOCC identifies as having had their equal access to KBOCC's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to KBOCC's education program or activity after KBOCC determines that sex discrimination occurred.

2.3.12 Respondent: A person who is alleged to have violated KBOCC's prohibition on sex discrimination.

2.3.13 Student: A person who has gained admission.

2.3.14 Student with a Disability: A student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3).

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

(1) Restore or preserve that party's access to KBOCC's education program or activity, including measures that are designed to protect the safety of the parties or KBOCC's educational environment; or

(2) Provide support during KBOCC's grievance procedures or during the informal resolution process.

Section 3: Reporting Sex Discrimination and Preservation of Evidence

3.1 Reporting to KBOCC

3.1.1 Reporting to/Notifying the Title IX Coordinator: Reports of sex discrimination may be made to the Title IX Coordinator. The Title IX Coordinator may be notified at any time by email, phone, [online form](#) or mail. Notifications may be made in person during business hours to the deputy Title IX Coordinator. The Title IX Coordinator will promptly respond by offering supportive measures regardless of whether a complaint is initiated.

3.1.2 Reporting to all Employees Who are Not Designated as Confidential Employees: If any employee who is not designated as a confidential employee has information about conduct that may reasonably constitute sex discrimination, the employee must notify the Title IX Coordinator.

3.1.3 Reporting to Confidential Employees: Confidential employees at KBOCC include the following:

Name and Title: Jamie Schultz, Academic Affairs Administrative Assistant

Phone: 906-524-8209

Email: jschultz@kbocc.edu

Reports made to confidential employees are considered confidential reports. The confidential employee must explain the following to a person who informs them of conduct that reasonably may constitute sex discrimination.

- (1) The employee's status as confidential for purposes of this Policy, including any circumstances in which the employee is not required to report to the Title IX Coordinator;
- (2) How to contact the Title IX Coordinator and how to make a complaint of sex discrimination; and
- (3) That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an information resolution or an investigation under the grievance procedures.

3.1.4 Public Awareness Events: When the Title IX Coordinator is notified of information that may reasonably constitute sex-based harassment that was provided during a public event to raise awareness about sex-based harassment that was held on KBOCC's campus or through an online platform sponsored by KBOCC, KBOCC is not obligated to act in response to the information unless it indicates an imminent and serious threat to the health or safety of a complainant, any students, employees, or other individuals. However, KBOCC must use the information to inform its efforts to prevent sex-based harassment.

3.1.5 Anonymous and Confidential Reporting: Anonymous reports may be made to the Title IX Coordinator by email, phone, [online form](#) or mail. A decision to remain anonymous, however, may greatly limit KBOCC's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Policy.

Individuals may file a report with the Title IX Coordinator and request to remain confidential. KBOCC will evaluate the ability to afford confidentiality. However, doing so may greatly limit KBOCC's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Policy.

3.2 Reporting to Law Enforcement: Reports may be filed with local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from KBOCC investigations.

Village of L'Anse Police Department
101 N. Main Street, L'Anse, MI
906-524-6050
lansepd@lansemi.org

KBIC Tribal Police
15817 US 41, Baraga, MI
906-353-6626

Baraga County Sheriff
940 US Highway 41, L'Anse, MI
906-524-6100, ext. 695

3.3 Reporting to Outside Agencies: Reports may be made by students and employees to external agencies:

(1) Office for Civil Rights

U.S. Department of Education
1350 Euclid Avenue, Suite 325
Cleveland, Ohio 44115
Telephone: (216) 522-4970
TDD: (800) 877-8339
Fax: (216) 522-2573
Email: OCR.Cleveland@ed.gov
Website: <http://www.ed.gov/ocr>

(2) Michigan Department of Health and Human Services

47420 State Hwy M26, Suite 62
Houghton, MI 49931
Telephone: (906) 482-0500

(3) Michigan Department of Civil Rights

Capitol Tower Building
110 West Michigan Avenue, Suite 800
Lansing, MI 48933
Telephone: (517) 335-3165
Fax: (517) 241-0546
Email: MDCRInfo@michigan.gov

(4) U.S. Equal Employment Opportunity Commission (employees only)

Patrick V. McNamara Building
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
Telephone: (313) 774-0020
TTY: (800) 669-4000
Fax: (313) 226-4610

3.4 Outside Agency Confidential Support and Resources:

3.4.1 KBOCC Confidential Resources:

UWill <https://app.uwill.com/>

3.4.2 Community Confidential Resources:

KBIC Niimigimiwang Victim Services
Call (24-hour Helpline): 855-202-8375 or 906-353-4599

Baraga County Shelter Home
Call (24-hour Helpline): 906-524-7078
www.bcshelter.org

Dial Help
Call (24-hour Helpline): 800-562-7622
Text: 906-356-3337
www.dialhelp.org

3.4.3 State Resources:

State of Michigan
Sexual Assault Hotline (24/7): 1-855-864-2374
Text: 1-866-238-1454
Online: <https://mcedsv.org/sexual-violence-hotline-chat/>

Michigan Domestic Violence Hotline
Phone: 1-866-864-2338
Text: 877-861-0222
Online: <https://mcedsv.org/hotline-domestic-violence/hotline-chat/>

Michigan Department of Health & Human Services
Copper Shores Victim Services Unit
Call: 800-562-7622
Text: 906-356-3337
Email: vs@coppershores.org
www.coppershores.org/victim-support

3.4.4 National Resources:

National Sexual Assault Hotline
Phone (24/7): 1-800-656-4673

Online: <https://hotline.rainn.org/online>

National Domestic Violence Hotline

Phone: 1-800-799-7233

Text: Text "START" to 88788

3.5 Time Limits on Reporting: There are no time limits on reporting sex discrimination to the Title IX Coordinator or KBOCC. If the respondent is no longer subject to KBOCC's education program or activity or significant time has passed, KBOCC will have limited ability to investigate, respond, and/or provide disciplinary remedies and sanctions.

3.6 KBOCC's Federal Reporting Obligations: Certain KBOCC employees, called Campus Security Authorities, have a duty to report certain incidents of misconduct to comply with the Clery Act. Campus Security Authorities are not required to report personally identifiable information for Clery Act purposes, but statistical information must be sent regarding the type of incident that occurred and its general location (e.g., on or off-campus) for publication in an annual report of crime statistics, called the Annual Security Report. Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, but the statistics do not personally identify complainants or respondents. Reports by Campus Security Authorities are not official police reports and do not initiate criminal investigations.

When Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking are reported under the Clery Act, KBOCC must issue timely warnings for such incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

KBOCC will not disclose a complainant's name and other identifying information in a timely warning but will provide sufficient information for KBOCC community members to make informed safety decisions in response to potential danger.

3.7 Preservation of Evidence: KBOCC recognizes that a complainant may need time to decide whether to report an incident of sexual discrimination to the police and/or KBOCC. The purpose of this section is to provide complainants with suggestions on preserving evidence while they decide whether to report an incident.

KBOCC encourages complainants, as soon as possible after experiencing sexual assault, to take steps to preserve evidence such as:

- (1) Have a forensic sexual assault nurse examination performed as soon as possible after the incident;
- (2) When possible, prior to having a forensic sexual assault nurse examination performed, avoid: changing clothing, bathing, showering, using a douche, using the bathroom, brushing one's teeth, drinking liquids, washing one's hands or face, or combing one's hair;
- (3) Preserve any clothing, sheets, or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags);
- (4) Preserve or capture electronic communications such as text messages, e-mails, social media posts, or exchanges (e.g., Snapchat, Facebook, Twitter);

(5) Preserve or capture video, audio (e.g., voice mail messages), or photographs, including those stored on smartphones or other devices; and

(6) Preserve any other physical, documentary, and/or electronic data that might be helpful to an investigator.

Section 4: Grievance Procedures - Evaluation and Supportive measures

4.1 Initial Response to Notification of Sex Discrimination: Upon notification of conduct that reasonably may constitute sex discrimination, the Title IX Coordinator will promptly contact the complainant regardless of whether the complainant was the individual who initiated the notification. During the initial contact with the complainant the Title IX Coordinator will:

- (1) Provide the complainant with notice of their rights and options;
- (2) Explain the process for initiating a complaint, including the factors considered to determine when the Title IX Coordinator will initiate a complaint.
- (3) Explain the grievance procedures and informal resolution process;
- (4) Discuss the availability of supportive measures regardless of whether a complaint is initiated;
- (5) Consider the complainant's wishes with respect to supportive measures.

4.2 Supportive Measures: Supportive measures must be offered and coordinated by KBOCC.

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties or KBOCC's educational environment, or to provide support during KBOCC's grievance procedures or during the informal resolution process. KBOCC must not impose such measures for punitive or disciplinary reasons.

Supportive measures may differ based on what KBOCC deems to be reasonably available. Examples of supportive measures include, but are not limited to:

- (1) Counseling;
- (2) Extensions of deadlines and other course-related adjustments;
- (3) Campus escort services;
- (4) Increased security and monitoring of certain areas of the campus;
- (5) Restrictions on contact applied to one or more parties;
- (6) Leaves of absence;
- (7) Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

Supportive measures may be modified or terminated at the conclusion of the grievance procedures or at the conclusion of the informal resolution process or KBOCC may continue with the supportive measures indefinitely.

4.2.1 Supportive Measures Review: Complainants or respondents may seek modification or reversal of KBOCC's decision to provide, deny, modify, or terminate supportive measures applicable to them. An impartial employee, the Supportive Measures Review Administrator, will have authority to modify or reverse the decision if the Supportive Measures Review Administrator determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures in this Policy. The parties will be provided with additional opportunity to seek review by the Supportive Measures Review Administrator of supportive measures if circumstances change materially.

Request for review of supportive measures must be made in writing to:

- (1) The President by emailing President@kbocc.edu
- (2) Within 7 working days of the initial decision on supportive measures.

Upon receipt of a request for review, the Supportive Measures Review Administrator will evaluate the request and provide a written response with their determination as to whether the prior decision to provide, deny, modify, or terminate the supportive measure was inconsistent within 7 working days. An extension of this time frame may occur for good cause. Written notice will be provided to the parties of the extension of the time frames with explanation of the reasons for such action.

4.2.2 Privacy of Supportive Measures Information: KBOCC will not disclose information about any supportive measures to individuals other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the education program or activity.

4.2.3. Consultation for Student with Disability: If the complainant or respondent has a disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that KBOCC has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, in the implementation of supportive measures.

Section 5: Complaint

KBOCC will use the grievance procedures or the informal resolution process for all allegations of sex discrimination in a complaint.

5.1 Initiating a Complaint: A complaint must be an oral or written request to KBOCC that can objectively be understood as a request for KBOCC to investigate and make a determination about alleged sex discrimination.

The following persons have a right to initiate a complaint:

(1) For Allegations of Sex-Based Harassment:

- (i) A complainant.

(ii) An authorized legal representative with the legal right to act on behalf of a complainant.

(iii) The Title IX Coordinator.

(2) For Allegations of Sex Discrimination Other than Sex-Based Harassment:

(i) Any student or employee; or

(ii) Any person other than a student or employee who was participating or attempting to participate in KBOCC's education program or activity at the time of the alleged sex discrimination.

5.2 Title IX Coordinator Considerations for Initiating a Complaint: In the absence of a complaint or the withdrawal of the allegations in a complaint, the Title IX Coordinator must determine whether to initiate a complaint of sex discrimination. The Title IX Coordinator must consider, at a minimum the following factors:

(1) The complainant's request not to proceed with initiation of a complaint;

(2) The complainant's reasonable safety concerns regarding initiation of a complaint;

(3) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;

(4) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;

(5) The age and relationship of the parties, including whether the respondent is an employee of KBOCC;

(6) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;

(7) The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and

(8) Whether KBOCC could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.

5.2.1 Notification of Complainant: If the Title IX Coordinator initiates a complaint, the Title IX Coordinator must notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including providing additional supportive measures.

5.3 Response Regardless of Whether Complaint is Initiated: Regardless of whether a complaint is initiated, the Title IX Coordinator will take other appropriate, prompt and effective steps, in addition to steps necessary to effectuate remedies provided to an individual complaint, if any, to ensure that sex discrimination does not continue to recur within KBOCC's education program or activity.

5.4 Dismissal of a Complaint: KBOCC may dismiss a complaint of sex discrimination for any of the following reasons:

- (1) KBOCC is unable to identify the respondent after taking reasonable steps to do so;
- (2) The respondent is not participating in KBOCC's education program or activity and is not employed by KBOCC;
- (3) The complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the Title IX Coordinator declines to initiate a complaint under this Policy, and KBOCC determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under this policy even if proven; or
- (4) KBOCC determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or this Policy. Prior to dismissing the complaint under this section, KBOCC will make reasonable efforts to clarify the allegations with the complainant.

5.4.1 Notification of Dismissal of a Complaint: Upon dismissal, KBOCC will promptly notify the complainant of the basis for the dismissal in writing. If the dismissal occurs after the respondent has been notified of the allegations, then KBOCC will simultaneously notify the respondent of the dismissal and the basis for the dismissal.

5.4.2 Appeal of Dismissal of a Complaint: KBOCC will notify the complainant that a dismissal may be appealed. If the dismissal occurs after the respondent has been notified of the allegations, then KBOCC will also notify the respondent that the dismissal may be appealed. The complainant and respondent (if respondent has been notified of the allegations) may appeal on the bases set forth in section 10.

If the dismissal is appealed, KBOCC will:

- (1) Notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;
- (2) Implement appeal procedures equally for the parties;
- (3) Ensure that the appellate decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- (4) Ensure that the decisionmaker for the appeal has been trained;
- (5) Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- (6) Notify the parties of the result of the appeal and the rationale for the result.

5.4.3 After Dismissal of Complaint: If KBOCC dismisses a complaint, KBOCC will, at a minimum:

- (1) Offer supportive measures to the complainant.

- (2) Offer supportive measures to the respondent if the respondent has been notified of the allegations.

- (3) Take other appropriate, prompt and effective steps to ensure that sex discrimination does not continue or recur within the KBOCC's education program or activity.

5.5 Consolidation of Complaints: KBOCC may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances.

If one of the complaints to be consolidated is a complaint of sex-based harassment involving a student complainant or student respondent, the grievance procedures for investigating and resolving the consolidated complaint must comply with the requirements in KBOCC's Title IX Policy Prohibiting Sex-Based Harassment Involving a Student.

Section 6: Grievance Procedures - General Requirements

6.1 Equitable Procedures: The grievance procedures within this Policy are designed to treat complainants and respondents equitably.

6.1.1 Burden of Proof and Burden of Gathering Evidence: All investigations and proceedings, including hearings, relating to sex discrimination will be conducted using a "preponderance of the evidence" (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on KBOCC not the parties.

6.1.2 Presumption of Not Responsible: The respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.

6.1.3 Time Frames for Grievance Process: KBOCC strives to complete the grievance process within sixty (60) working days. KBOCC strives to complete the evaluation period within five (5) working days after meeting with the complainant, the investigation period within thirty (30) working days after initiation of complaint, the determination period within fifteen (15) working days, and the appeal within ten (10) working days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include, but are not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

6.1.4 Range of Disciplinary Sanctions: Sanctions that may be required if an individual is found responsible for violating this policy include, but are not limited to:

- (1) For Students:
 - Verbal Warning
 - Written Warning
 - Intervention/Corrective Action
 - Disciplinary Probation
 - Restitution
 - Suspension
 - Expulsion
 - Referral to Law Enforcement

- (2) For Employees:
 - Corrective Action
 - Verbal Reprimand
 - Written Reprimand
 - Suspension
 - Termination

6.1.5 Prohibition Against Bias or Conflict of Interest: The Title IX Coordinator, investigator, decisionmaker, or appellate decisionmaker must not have a bias for or against complainants or respondents generally or an individual complainant or respondent. The decisionmaker may be the same person as the Title IX Coordinator or investigator.

6.1.6 Privacy Protection: KBOCC will take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the grievance procedures, provided that the steps do not restrict the ability of the parties to: obtain and present evidence, including by speaking to witnesses, consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures.

6.1.7 Objective Evaluation of Evidence: KBOCC will conduct an objective evaluation of all evidence that is relevant, as defined and not otherwise impermissible, including both inculpatory and exculpatory evidence—and provide that credibility determinations must not be based on a person's status as a complainant, respondent, or witness.

Section 7: Grievance Procedures - Investigation

KBOCC will conduct an investigation following a complaint and notice of allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be, an attorney. The advisor's role is limited to assisting, advising, and/or supporting a complainant or respondent. An advisor is not permitted to speak for or on behalf of a complainant or respondent or appear in lieu of a complainant or respondent.

7.1 Notice of Allegations: Upon initiation of KBOCC's grievance procedures, KBOCC will provide notice of the allegations to the parties whose identities are known which includes:

- (1) KBOCC's grievance procedures.

- (2) Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes:

- (i) The identities of the parties involved in the incident(s),
 - (ii) The conduct alleged to constitute sex discrimination under this Policy, and
 - (iii) The date(s) and location(s) of the alleged incident(s), to the extent that information is available to KBOCC.
- (3) A statement that retaliation is prohibited; and
- (4) A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence and an investigative report that summarizes the investigation.

7.1.1 Updating Notice of Allegations: If, in the course of an investigation, KBOCC decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice of allegations or that are included in a complaint that is consolidated, KBOCC will provide notice of the additional allegations to the parties whose identities are known.

7.2 Burden: KBOCC will ensure that the burden is on KBOCC—not on the parties—to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

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

KBOCC has discretion to determine whether parties may present expert witnesses and will make that determination equally to the parties.

7.4 Unauthorized Access: KBOCC will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

7.5 Questioning of Parties and Witnesses: KBOCC will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness' credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

Section 8: Grievance Procedures - Review of Evidence

KBOCC will provide an equal opportunity to access the relevant and not otherwise impermissible evidence, and an investigative report that summarizes the investigation.

KBOCC will provide a reasonable opportunity to respond to the evidence and to the investigative report. Upon receipt of the evidence and investigative report, the parties will have five (5) working days to review and provide a written response to the evidence and investigative report.

Section 9: Grievance Procedures - Determination

9.1 Notification: At the conclusion of the investigation and review of the evidence and investigative report, the decisionmaker (who may be the same or separate than the investigator) will notify the parties in writing of the determination whether sex discrimination occurred, include the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal.

9.2 Remedies and Disciplinary Sanctions: If there is a determination that sex discrimination occurred, as appropriate, Title IX Coordinator will coordinate the provision and implementation of remedies to the complainant and other persons identified as having had equal access to KBOCC's education program or activity limited or denied by sex discrimination, coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.

9.2.1 Finality of Determination: The determination regarding responsibility becomes final either on the date KBOCC provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

9.2.2 Discipline Outside of Grievance Procedures: KBOCC will not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.

KBOCC will not discipline a party, witness, or others participating in KBOCC's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

Section 10: Appeals

Appeals are offered to both parties equitably to challenge the determination as to whether sex discrimination occurred and the dismissal of a complaint or allegation therein. Appeals must be filed within 10 working days of the determination or dismissal.

Appeals may be made on the following bases:

- (1) Procedural irregularity that would change the outcome;
- (2) New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment occurred or dismissal was made; and
- (3) The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

Section 11: Informal Resolution

At any time prior to determining whether sex discrimination occurred, the parties may agree, with the support of the Title IX Coordinator, to participate in an informal resolution process facilitated by KBOCC, that that does not involve the grievance procedures.

KBOCC will not require or pressure the parties to participate in an informal resolution process and will not require waiver of the right to an investigation and determination of a complaint as a condition of enrollment, continuing enrollment, employment, continuing employment, or exercise of any other right.

The facilitator for the informal resolution process will not be the same person as the investigator or decisionmaker in the grievance procedures.

Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, restorative justice, and resolution by agreement of the parties.

11.1 Discretion of Title IX Coordinator: The Title IX Coordinator has discretion to determine whether it is appropriate to offer an informal resolution and may decline to offer informal resolution despite one or more of the party's wishes. When determining whether to offer informal resolution, the Title IX Coordinator will consider whether the alleged conduct presents a future risk of harm to others.

11.2 Informal Resolution Notice: Prior to the initiation of the informal resolution process, KBOCC will provide the parties written notice that explains:

- (1) The allegations;
- (2) The requirements of the informal resolution process;
- (3) Notice that, prior to agreement to a resolution, any party has the right to withdraw from the informal process and to initiate or resume the grievance procedures;
- (4) Notice that the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming grievance procedures arising from the same allegations;
- (5) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- (6) What information KBOCC will maintain and whether and how KBOCC could disclose such information for use in grievance procedures if the grievance procedures are initiated or resumed.

11.3 Potential Informal Resolution Terms: Potential terms that may be included in an informal resolution agreement include but are not limited to:

- (1) Restrictions on contact; and
- (2) Restrictions on respondent's participation in one or more of KBOCC's programs or activities or attendance at specific events, including restrictions KBOCC could have imposed as remedies or disciplinary sanctions had the decisionmaker determined at the conclusion of the grievance procedures that sex discrimination occurred.

Section 12: Emergency Removal and Administrative Leave

12.1 Emergency Removal: At any time after the Title IX Coordinator is given notice of sex discrimination, KBOCC may remove a respondent on an emergency basis. KBOCC will only conduct an emergency removal after:

- (1) Undertaking an individualized safety and risk analysis,
- (2) Determining that an immediate and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and
- (3) Providing the respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, immediately following removal.

12.2 Administrative Leave: KBOCC may place an employee respondent on administrative leave during the pendency of the grievance process in this Policy.

Section 13: Recordkeeping

The following records will be maintained by KBOCC for at least seven (7) years:

- (1) Records documenting the informal resolution process or grievance procedures for each complaint of sex discrimination including the resulting outcome.
- (2) Records documenting the actions KBOCC took to provide supportive measures and remedies and a fair and equitable response under this policy and Title IX.
- (3) Training materials used to provide training to all employees, the Title IX Coordinator, designees, investigators, decisionmakers, informal resolution facilitators, appellate decisionmakers, and supportive measures review administrators.