

# **KANSAS WESLEYAN UNIVERSITY**

## **POLICY ON SEXUAL ASSAULT, HARASSMENT, & OTHER FORMS OF SEXUAL MISCONDUCT**

**EFFECTIVE DATE: DECEMBER 21, 2010**

**ADOPTED BY BOARD OF TRUSTEES: FEBRUARY 25, 2012**

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**AMENDED POLICY ADOPTED BY BOARD OF TRUSTEES: June 20, 2015**

MODIFICATION OF AND AMENDMENT TO: KANSAS WESLEYAN UNIVERSITY (“KWU”) FACULTY HANDBOOK (IN EFFECT DURING 2010-2011, AS AMENDED), EMPLOYEE HANDBOOK FOR ADMINISTRATION AND STAFF (IN EFFECT DURING 2010-2011, AS AMENDED), COYOTES STUDENT HANDBOOK (DATED 2010-2011, AS AMENDED), 2010-11 ACADEMIC CATALOG (DATED JULY 2010, AS AMENDED) AND OTHER KWU DOCUMENTS AND WRITTEN MATERIALS AND POLICIES COVERING SEXUAL MISCONDUCT AND/OR UNLAWFUL HARASSMENT

The KWU Faculty Handbook (in effect during 2010-2011, as amended) (“Faculty Handbook”), Employee Handbook for administration and staff (in effect during 2010-2011, as amended) (“Employee Handbook”), Coyotes Student Handbook (dated 2010-2011, as amended) (“Student Handbook”), 2010-11 Academic Catalog (dated July 2010, as amended) (“Academic Catalog”), and all other KWU documents, written materials and policies addressing or covering sexual misconduct and/or sexual harassment, are collectively referred to herein as the “Handbooks,” and are hereby amended and modified to add the following Policy on Sexual Assault, Harassment, & Other Forms of Sexual Misconduct in its entirety, which is to be construed as if its contents are contained within the Handbooks.

IN THE EVENT OF ANY INCONSISTENCY IN THE PROVISIONS OF THE HANDBOOKS (AS REVISED, AMENDED OR MODIFIED FROM TIME TO TIME), AND THIS INSTRUMENT, THE PROVISIONS OF THIS INSTRUMENT SHALL PREVAIL AND BE INTERPRETED AS SUPERSEDING THOSE IN THE HANDBOOKS.

**I. POLICY**

Sexual misconduct, sexual harassment, and sexual assault are unacceptable and will not be tolerated at KANSAS WESLEYAN UNIVERSITY. Accordingly, KWU urges an individual to make a formal report if that individual is the victim of sexual misconduct, sexual assault, or sexual harassment; has knowledge of another person’s being the victim of sexual misconduct, sexual assault, or sexual harassment, or believes in good faith that he/she has witnessed a possible warning sign of sexual misconduct, sexual assault, or sexual harassment. A report of sexual misconduct, sexual assault, or sexual harassment will be dealt with promptly. Confidentiality will be maintained to the greatest extent possible, but without violating the need to insure due process and procedure to anyone accused of sexual misconduct, sexual assault, or sexual harassment.

ALL MEMBERS OF THE KWU COMMUNITY, INCLUDING BUT NOT LIMITED TO STUDENTS, FACULTY (INCLUDING ADJUNCT FACULTY), ADMINISTRATORS, STAFF, VOLUNTEERS AND INDEPENDENT CONTRACTORS (COLLECTIVELY “MEMBERS” OR “members”) ARE SUBJECT TO THIS POLICY.

Violators will be subject to disciplinary action that may include job termination, expulsion, suspension, removal from campus, contract cancellation, other appropriate

institutional sanctions or any other action reasonably necessary to address the inappropriate behavior. Prosecution by civil authorities may also occur.

## **II. DEFINITIONS**

### **A. Sexual Misconduct**

This policy defines sexual misconduct as any threat, act or omission used to obtain sexual gratification against another's will or at the expense of another, including without limitation, behavior inducing fear, shame, or mental suffering. Sexual misconduct includes unwanted sexual acts or actions, whether by a domestic partner, an acquaintance, a person in the position of authority, or a stranger that occurs without indication of consent of both individuals or under threat or coercion. Sexual misconduct can occur either forcibly and/or against a person's will, or when a person is incapable of giving consent. Silence does not, in and of itself, constitute consent. The victim of sexual misconduct may be anyone, including but not limited to, adults, adolescents, minors, the developmentally disabled, and vulnerable individuals regardless of age.

Sexual misconduct may include, but is not limited to, rape, forcible sodomy, forcible oral copulation, sexual assault with an object, sexual battery, forcible fondling, and threat of sexual assault.

### **B. Sexual Harassment**

This policy defines sexual harassment as unwelcomed sexual advances or requests for sexual favors or other unwelcome verbal or physical conduct of a sexual nature when submission to or rejection of such advances, requests, or conduct is made, either explicitly or implicitly.

Sexual harassment is also defined as unwelcome sexual advances or requests for sexual favors or other unwelcome verbal or physical conduct of a sexual nature that is so severe or pervasive that it has the purpose or effect of unreasonably interfering with a student's education or an employee's work performance, or of creating an intimidating, hostile, humiliating, or sexually offensive educational, living, or working environment, when judged by the standards of a reasonable person.

Sexual harassment also includes stalking, as defined by the Violence Against Women Act.

Sexual harassment does not refer to compliments or other behavior of a socially acceptable nature. It does not refer to discussions of material with a sexual component, which might offend some but was introduced in a class or conference for intellectual purposes.

Sexual harassment may be female to male, female to female, male to female or male to male.

Behavior may constitute sexual harassment no matter how delivered- in person, electronically, or otherwise. Sexual harassment includes, but is not limited to the following:

- (a) Unwelcome physical contact, including touching on any part of the body, kissing, hugging, or standing so close as to brush up against another person;
- (b) Requests for sexual favors either directly or indirectly;
- (c) Attempting in any way, explicitly or implicitly, to require sexual conduct as a condition of matriculation, continued student or employee status, employment, obtaining a raise, obtaining new duties or any type of advancement, as well as implying or threatening expulsion or termination or unfairly evaluating performance;
- (d) Attempting in any way, explicitly or implicitly, to require a student or employee to perform certain duties or responsibilities simply because of his/her gender or other protected characteristics ; or
- (e) Attempting in any way, explicitly or implicitly, to require a student or employee to submit to sexual conduct by a vendor, customer or other third party.

Other behavior that may seem innocent or acceptable to some people may constitute sexual harassment to others. Such behavior may include, but is not limited to:

- (a) Unwelcome sexual flirtations, advances, jokes, or propositions;
- (b) Unwelcome comments about an individual's body or personal life;
- (c) Open discussion of intimate details of one's own personal life;
- (d) The use of sexually degrading words to describe an individual; or
- (e) The display in the workplace of objects, pictures, cartoons or writings that might be perceived as offensively, sexually suggestive.

KWU requires that professors who teach courses in which sexually explicit materials are a part of the curriculum because of the nature of such courses, e.g. human biology, publicize course content in advance and conduct such classes with appropriate decorum and sensitivity.

Sexual harassment may also include, but is not limited to:

- **Gender Harassment:** Generalized sexist statements and behavior that convey insulting or degrading attitudes including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping or a person's failure to conform to stereotypical notions of masculinity or femininity even if those acts do not involve conduct of a sexual nature. Examples include suggestive or sexually explicit posters, calendars, photographs, graffiti, cartoons; email, voicemail, and social media including but not limited to Facebook and Twitter; and sexually explicit jokes or humor focused toward a particular gender.
- **Seductive Behavior:** Unwanted, inappropriate and offensive sexual advances. Examples include repeated unwanted sexual invitations, insistent requests for dinner, drinks or dates, persistent letters, phone calls and other invitations.
- **Sexual Bribery:** Solicitation of sexual activity or other sex-linked behavior by promising a reward (a better grade, promotion, etc.) for performing the activity or behavior. The proposition may be either overt or subtle.

- **Sexual Coercion:** Coercion of sexual activity or other sex-linked behavior by threat of punishment. Examples include negative performance evaluations, withholding promotions, threats of termination, or threats of a failing or lower grade.
- **Sexual Exploitation:** Non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual harassment offenses. Examples include, but are not limited to, invasion of sexual privacy, prostituting another student, non-consensual video or audio-taping of sexual activity, going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex), engaging in voyeurism, knowingly transmitting an STI or HIV to another individual, exposing one's genitals in non-consensual circumstances, inducing another to expose their genitals. Sexually-based stalking and/or bullying may also be forms of sexual exploitation.
- **Sexual Imposition:** Deliberate assaults or molestation, or unwanted physical contact such as patting, pinching, "friendly" arms around the shoulder or intentionally brushing against another person's body.
- **Other** conduct or behavior of a sexual nature deemed inappropriate by a KWU employee and/or student.

### C. Sexual Assault

Sexual assault is defined as the penetration, however slight, of another person's vagina or anus with any object or body part, or of the mouth with a penis or sexual object, without that person's consent.

Sexual assault also includes dating violence and domestic violence, as defined by the Violence Against Women Act, if the involved fits the definition above.

### D. 2013 Violence Against Women Act Section 304

Sexual Violence is prohibited and as specifically addressed in the Violence Against Women Reauthorization Act of 2013, Section 304, Campus Sexual Violence Act provisions amending Section 485 (f) of the Higher Education Act of 1965 (the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act). Sexual violence refers to physical sexual acts perpetrated against a person's consent or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, acquaintance rape, domestic violence, dating violence, sexual assault, stalking, as well as aiding acts of sexual violence.

Dating Violence: The term "dating violence" means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) length of the relationship, (ii) the type of relationship, (iii) the frequency of interaction between the persons involved in the relationship.

Domestic Violence: The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

Stalking: The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others, or (B) suffer substantial emotional distress.

Criminal offenses and statutory references include, but are not limited to:

- Rape – K.S.A. 21-5503
- Sexual Battery – K.S.A. 21-5505
- Domestic Battery – K.S.A. 21-5414
- Sexual Exploitation of a Child – K.S.A. 21-5510
- Unlawful Voluntary Sexual Relations – K.S.A. 21-5507
- Indecent Liberties with a Child – K.S.A. 21-5506
- Lewd and Lascivious Behavior – K.S.A. 21-5513
- Criminal Sodomy – K.S.A. 21-5504
- Incest – K.S.A. 21-5604

Other definitions include:

- Domestic Violence – K.S.A. 21-5111(i)
- Dating Violence – A type of domestic violence where the perpetrator is or has been involved in a social relationship of a romantic nature with the victim. K.S.A. 21-5111(i)(1)
- Sexual Intercourse – K.S.A. 21-5501(a)

## **E. Consent**

A critical factor that distinguishes acceptable sexual behavior from unacceptable sexual behavior is the consent of the parties involved. Consent is informed and freely and actively given. Consent is communicated through mutually understandable words or actions that indicate willingness by all of the involved parties to engage in the same sexual activity, at the same time, and in the same way.

Clear and open communication is an essential element to conveying and understanding consent. Any person who contemplates initiating any form of sexual activity is strongly encouraged to talk with all involved parties before engaging in such activity. While it is the responsibility of the initiator of a specific sexual activity to obtain consent, individuals should communicate as clearly and verbally as possible with all parties about what they do and do not want.

## **Elements of Consent:**

1. Consent cannot be freely given if the person's ability to understand and give consent is impaired. Examples of those who are impaired and therefore cannot give consent include:
  - any person who is incapacitated due to the use of alcohol and/or other drugs;
  - any person who is unconscious or for any reason is physically incapacitated;
  - any person who is mentally impaired;
  - any person less than 17 years old;
  - any person who has experienced the explicit or implicit use of force, coercion, threats, and/or intimidation.
2. Ideally, consent is given verbally. However, consent (or lack of consent) may also be expressed through gestures, body language, and/or attitude. For example, active reciprocation could express consent, and pushing someone away, or simply moving away, could express lack of consent.
3. Silence does not equal consent.
4. Consent to one form of sexual activity does not necessarily imply consent to other forms of sexual activity. Consent may be given for specific activities and not for others.
5. Any party has the right to change their mind and withdraw consent at any time.
6. A prior sexual history between the participants does not constitute consent.
7. A person's ability to freely give consent may be jeopardized if the initiator is in a position of power over the person. Examples might include if the initiator is a supervisor of the person.

## **F. Background Checks**

This policy defines background checks as, but not limited to, the following:

- A search for sex-related offenses in an individual's counties of residence for the past seven years;
- A search of the state registry of sex offenders; and
- A database search for criminal activity in the individual's states of residence for the past seven years.

## **G. Key Students**

This policy defines "key students" as those students who are in practicum involving protected persons or the medical field, student teachers, students working with protected persons and resident assistants.

## **H. Camp Counselors and Program Leaders**

This policy defines "camp counselors" and "program leaders" as those members who in the course and scope of their employment or service conduct activities at or on behalf of KWU and come in contact with protected persons.

## **I. Protected Persons**

This policy defines “protected persons” to include minors, developmentally disabled individuals regardless of age and vulnerable individuals regardless of age. Vulnerable individuals include those who are mentally incapacitated, whether temporarily or permanently, for any reason including but not limited to intoxication, drugs, or mental incompetence. Sexual misconduct with respect to a protected person includes the intent to arouse or satisfy the sexual desires of either the protected person or the perpetrator.

## **J. Minors**

This policy defines minors as those individuals who have not yet reached the age of majority and are not enrolled as students at KWU.

## **K. Respondent**

For the purpose of this Policy, respondent is the person accused of violating the KWU’s Policy on Sexual Assault, Harassment, & Other Forms of Sexual Misconduct (hereinafter referred to as “this Policy”).

## **L. Burden of Proof**

In investigating and adjudicating violations of this Policy the preponderance of the evidence standard is used. The preponderance of the evidence means the fact in dispute is more likely than not to be true based on the weight of the totality of the evidence provided to KWU.

## **M. Title IX Coordinator**

The Title IX Coordinator oversees KWU’s response to reports and complaints that involve possible sex discrimination and violations of this Policy, to monitor outcomes, identify and address any matters, and assess effects on the campus climate, so KWU can address issues that affect the wider campus community.

## **N. Title IX Investigators**

The Title IX investigator assists in resolving complaints of violations of this Policy at KWU. The Title IX investigator will conduct investigations of complaints filed asserting violation of this Policy with prompt and thorough investigation plans while acting as a neutral party.

## **O. Complainant**

The complainant is the person who makes either a formal or informal complaint asserting a violation of this Policy.

**P. Hostile Environment Caused by Sexual Harassment**

“Hostile work environment” sexual harassment occurs when an employee is subject to unwelcome advances, sexual innuendos, or offensive gender-related language that is sufficiently severe or pervasive from the perspective of a reasonable person of the same gender as the offended employee.

**Q. Non-Consensual Sexual Contact**

Non-consensual sexual contact, which is any intentional sexual touching with any object, by any person upon another without consent and/or by force.

**R. Non-Consensual Sexual Intercourse**

Non-consensual sexual intercourse, however slight, by any person upon another without consent and/or by force. It includes oral, anal and vaginal penetration, to any degree, with any object.

**S. Retaliation**

For the purpose of this Policy, retaliation means adverse action by KWU against a person because the person brought a formal or informal complaint to KWU asserting a violation of this Policy and/or because the person provided evidence to KWU during an investigation described in this Policy.

**T. Sexual Intimidation**

Sexual intimidation involves one person threatening another person that the first person will commit a sex act against the other person; engage in indecent exposure; or stalk the other person who reasonably perceives the stalker is pursuing a romantic and/or sexual relationship.

**U. Incapacitation**

Incapacitation means a person who is temporarily incapable of appraising or controlling his/her conduct due to the influence of a narcotic, anesthetic, or other substance administered without consent or due to any other act prohibited by this Policy committed upon the victim without consent.

**III. CONFIDENTIALITY OF INFORMATION**

KWU will make every effort reasonably possible to preserve the privacy of an individual who makes a complaint under this policy. As KWU’s procedure for handling complaints is initiated and completed, all involved parties will be expected to respect the sensitive nature of the matter and to protect, to the extent possible consistent with KWU’s legal obligations, the confidentiality of the complainant, the person accused (the respondent), and all those involved in the investigation. KWU will respect the privacy of the complainant, the individual(s) against whom the complaint is filed (respondents), and the witnesses as much as possible, consistent with KWU’s legal obligations to investigate

and to take appropriate action. Only people who need to know will be told and information will be shared only as necessary with investigators, witnesses, and the accused individual.

The degree to which confidentiality can be protected, however, depends upon KWU's legal duty to respond to the information reported and the professional and or civil office role of the person being consulted. The professional and/or civil office and/or civil officer being consulted should make these limits clear before the disclosure of any facts.

**To Report Confidentially:** If one desires that details of an incident of sexual assault, harassment, or other sexual misconduct be kept confidential, he or she should speak with a counselor, available at local agencies, on or off-campus, who can maintain confidentiality. In addition, the person may speak off-campus with members of the clergy, who will also keep reports made to them confidential.

**Non-confidential reporting options:** Individuals are encouraged to speak to officials of KWU to make formal reports of sexual assault, harassment, or forms of sexual misconduct. Individuals who make formal reports have the right and can expect to have incidents of sexual assault, harassment, or other sexual misconduct taken seriously by KWU when formally reported, and to have those incidents investigated and properly resolved through administrative procedures.

KWU will act to investigate all complaints, either formal or informal, to take appropriate actions based on the weight of the totality of the evidence, against any student, faculty member, staff member, administrator, or other KWU employee when it is determined that it is more probably true than not that a violation of this Policy has occurred.

Certain KWU officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (such as pursuant to the Clery Act). All personally identifiable information is kept confidential, but statistical information must be reported to KWU campus security regarding the type of incident, date, and the location of the incident (using Clery location categories) and the Clery crime category. Further information regarding disclosure may be found in Section VII.

#### **IV. OPTIONS FOLLOWING AN ACT OF SEXUAL ASSAULT, HARASSMENT, OR OTHER FORMS OF SEXUAL MISCONDUCT**

A member of KWU's community who is the victim of sexual assault, or other forms of sexual misconduct, has knowledge of a third party victim of sexual assault, or other forms of sexual misconduct, or believes in good faith that he/she has witnessed a possible warning sign of sexual assault, or other forms of sexual misconduct as defined in this Policy is urged to make a formal report to the police, Student Development Office, Title IX Coordinator, and/or KWU Provost, as appropriate.

Whether or not the individual makes a formal report, all victims of sexual misconduct are urged to seek appropriate help, which may include a medical evaluation and obtaining information, support, and counseling, either on or off campus. Victims should use the resources listed in this policy to assist them in accessing the full range of services available.

### **A. Medical Treatment**

A person who is the victim of sexual misconduct is urged to seek appropriate medical evaluation as promptly as possible.

- For life-threatening conditions, call 911.
- For all other situations, see Procedures for Sexual Assault in the Student Handbook.

### **B. Medical-Legal Evidence Collection**

A person who is the victim of sexual misconduct (particularly rape, forcible oral copulation, or sodomy) is encouraged to request collection of medical-legal evidence. Collection of evidence entails interaction with police and a police report. Prompt collection of physical evidence is essential should a person later decide to pursue criminal prosecution and/or a civil action.

### **C. Obtaining Information, Support, and Counseling**

Whether or not one makes a formal report, a person who is the victim of sexual misconduct is encouraged to obtain information, counseling, and support. Counselors at a variety of agencies, both on and off campus, can help a person decide what steps to take, such as seeking medical attention, preserving evidence, obtaining counseling, or filing a report with authorities.

Information, support and advice are available for anyone who wishes to discuss issues related to sexual assault, harassment or other forms of sexual misconduct, whether or not an act constituting either has actually occurred, and whether or not the person seeking information has been harassed, assaulted, accused of an act of sexual assault, harassment or other forms of sexual misconduct, or is a third-party.

The degree to which confidentiality can be protected depends upon whether KWU has a legal duty to respond to the allegations and the professional role of the person consulted, as well as the “due process” rights of any accused. The scope of confidentiality should be addressed by that professional person before specific facts are disclosed.

Students should use the Office of Student Development as a prime source of support and information, and employees and all other members, the KWU Provost’s Office and/or the Title IX Coordinator.

## **D. Formally Reporting An Act of Sexual Misconduct or Unlawful Harassment**

A person who is the victim of sexual assault, harassment or other forms of sexual misconduct, has knowledge of a third party victim, or believes in good faith that he/she has witnessed a possible warning sign of such behavior is encouraged to make a formal report to:

- The designated campus administrator; and/or Title IX Coordinator

Whether or not a witness or victim elects to report an act of sexual assault, harassment, or other forms of sexual misconduct or the warning signs of to the police, he or she is urged to make a formal report directly to the parties identified.

KWU has a board-approved policy and procedures in place for the confidential reporting by members of issues concerning sexual assault, harassment, or other forms of sexual misconduct.

Reporting of incidents should be accomplished pursuant to the specific recommendations in the Handbooks and on the KWU website.

## **E. Title IX Coordinator as a Resource**

KWU's Title IX Coordinator can be used by any KWU member as a resource for understanding and navigating the reporting/investigative and appeal process. Faculty or staff supporters should consult the Coordinator with questions about how to best support students going through the reporting/investigation and appeal process. The Title IX Coordinator is not a confidential resource.

## **F. Procedure for Handling Complaints**

### **Step 1- The initial report:**

Any person covered by the policy may either (a) report the complaint to the head of the department or unit in which the conduct occurred, but if that person's conduct is the reason for the complaint, then report the conduct to the next higher level of supervision: or (b) report the complaint to the Title IX Coordinator. Students or graduates students respectively may also report their complaint to the Office of Executive Director for Student Development.

It is important for all persons to preserve any relevant evidence related to the complaint.

Anonymous complaints cannot be ignored. While KWU endeavors to investigate all complaints, including anonymous complains, the nature of anonymous complaints makes investigation, determination, and remediation more difficult and, at times, impossible. Further, while KWU attempts to protect the identity of complainants who do not wish to be identified, this may not always be possible.

The initial report may be oral or written. However, if reported orally, notes will be taken by the Coordinator and/or investigator, and then will be required to be signed as being correct and complete by the complainant. The initial report should include as much information as possible regarding the alleged conduct or the incidents, including but not limited to: the dates and locations of the conduct; the effect the conduct has had on the employment, learning or living environment or the complainant's ability to participate in KWU programs or activities; and the name and title of the person alleged to have engaged in the conduct.

- A. In the event of a sexual violence or stalking complaint, during the interview of complainant a representative from DVACK or advocate can be present.
- B. If a complainant believes that a criminal act has occurred, then the complainant should make a criminal complaint to the police. The Title IX Coordinator, investigator should assist the complainant to facilitate the report to police. The Title IX Coordinator and or investigator shall also advise the complainant that he/she may decline to notify the police. However, the criminal justice system and this policy are separate procedures, but the report must be made under both procedures if a complainant wishes that both processes go forward. Complainants may also request a protection from abuse order under the Protection from Stalking Act, K.S.A. 60-31a01. If such an Order is issued, KWU will assist to enforce this order on campus.
- C. If the Title IX Coordinator determines, that he/she has no jurisdiction to investigate a complaint made under this Policy, or that the alleged conduct, even if true, would not constitute a violation of this Policy, then the Coordinator will notify the complainant that the complaint does not warrant further review under this Policy. This notice will explain the decision and refer the complainant to the appropriate KWU office.
- D. The Title IX Coordinator will also discuss whether interim measures should be put in place to ensure accommodations for the complainant. Interim measures will be determined on a case by case basis and may include one or more of the following measures:
  - Adjustments to academic workload (including extending deadlines or incompletes)
  - Adjustment to work schedules
  - Change in housing assignments, extracurricular activities, housing, and/or on-campus dining arrangements.
  - Escorts to and from classes
  - Skyping or other Electronic Means of Class Participation
  - Changing Class Schedules

- No Contact Directives
- Separate Exam times and locations

The above referenced list is not exhaustive but merely examples of some of the Interim Measures the KWU may offer in a particular situation.

E. Depending on the specific nature of the allegation, interim actions to the respondent may include, but is not limited to the following:

- Imposition of a No-Contact Directive (a directive that the parties refrain from having contact with one another, their families, and/or their personal possessions, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing);
- Provision of counseling services;
- Provision of medical services;
- Suspension;
- Suspension of housing contract;
- Administrative leave with or without pay.

*For students:*

- Provision of academic support services, like tutoring
- Provision of alterations to the student's class schedule to ensure the complainant and accused student do not attend the same classes;
- Moving the reporting student or accused student to a different residence hall; and
- Provision of an escort to ensure the student can move safely between classes and KWU activities.

*For employees:*

- Reassignment of job duties or supervisor
- Relocation of work site
- Administrative leave with pay

## **Step 2- Formation of the investigation/inquiry team:**

Once the Title IX Coordinator receives a complaint and deems the complaint to be within the jurisdiction of this Policy, the Coordinator will form the investigation/inquiry team for review of the facts and case. The team will consist of a lead and secondary investigator.

### **Step 3- Initial evaluation of the complaint:**

The investigative/inquiry team will interview the complainant as soon as possible after the initial report as to obtain preliminary and sufficient information to begin the investigation/inquiry. A complainant's failure or refusal to participate in the investigation/inquiry process may prevent the team from investigating the alleged conduct. To the extent possible, the team will proceed with an investigation if a report alleges conduct that would constitute a violation of this policy.

### **Step 4- Written complaint:**

The investigation/inquiry team shall make a written report from the initial contact with the complainant. After the written complaint is complete, the complainant shall have an opportunity to read the written report to verify its completeness and accuracy.

### **Step 5- Investigation/Inquiry:**

With or without a written complaint, the investigative/inquiry team will:

- A. Have contact and interview with the respondent. This will be completed within ten (10) working days of the initial report. A copy of the complaint, a copy of explanation of procedures, with a caution against retaliation, will be given at that time. After the initial interview a written copy of the interview will be given to the respondent. The respondent will have seven (7) working days to provide written response or rebuttal to the complaint to the investigative/inquiry team. Additionally, the respondent will be informed that the investigation/inquiry will proceed with or without the respondent's response.
- B. Receive, clarify and evaluate the respondent's responses to the complainant and;
- C. Interview any persons with specific knowledge of the alleged incident(s) and review relevant policies, procedures, files, documents and records.
- D. A report will be submitted by the investigators to the Coordinator within fifteen (15) working days from the point that investigators receive notifications.

### **Step 6- Determination and Written Determination:**

The Coordinator shall review the investigator's written report and will consider all the information the investigator gathered and decide whether or not the respondent violated this Policy, based on the preponderance of the evidence. The Coordinator will issue written determination, with fifteen (15) working days of receipt of the investigator's report, to the complainant, to the respondent and to the administration. The Coordinator's written determination will include a finding of fact, a determination of whether the respondent violated this Policy, and describe what the complainant and/or respondent must do to file an appeal of the written determination.

If the Coordinator determines that the respondent violated this Policy, the Coordinator will forward his or her written determination to the Provost who will determine appropriate disciplinary action.

#### **G. Appeal of Coordinator's Findings:**

If the complainant and/or respondent is dissatisfied with the Title IX Coordinator's written determination, the complainant and/or respondent may submit an appeal to the Title IX Appeal Team. That appeal must be submitted in writing to the Coordinator and Title IX Appeal Team within ten (10) working days from the date the Coordinator's written determination was issued. The appeal must state every ground on which the appeal is based.

On appeal, the Title IX Appeal Team does not conduct a new investigation. The Title IX Appeal Team may only decide, based upon the information presented, whether the Coordinator's determination was "clearly erroneous" (i.e., plainly in error). The Title IX Appeal Team will defer to the Coordinator for all credibility decisions (e.g., who is telling the truth). If an error(s) was made that would not have changed the determination (i.e., "harmless error"), then that error must be disregarded. In the event that the Title IX Appeal Team decides that the Coordinator's finding is clearly erroneous, the Provost shall refer the matter back to the Coordinator for further investigation and shall provide the coordinator with a specific written basis for the "clearly erroneous" determination. The process then returns to step 5 "investigations". A decision to remand to the Coordinator is not subject to appeal.

All decisions of the investigation should be made in writing, with copies to the complainant, respondent, coordinator and Title IX Appeal Team.

If the Title IX Appeal Team determines that the Coordinator's findings are not clearly erroneous, then the Title IX Appeal Team's determination is final and not subject to further review within the KWU.

The Title IX Appeal Team should rule on an appeal in a timely fashion, preferably within fifteen (15) working days after receipt of the appeal. Rulings should be made in writing, with copies to the complainant, respondent, and Coordinator.

#### **H. Sanctions:**

KWU reserves the right to take whatever measures it deems necessary in response to the Coordinator's written determination that this Policy was violated. Such measures include as to employees discipline up to and including cancellation of contract and/or termination of employment and as to students include but are not limited to, modification of on-campus housing arrangements, probation, and expulsion. Other members of KWU's community who are not subject to an explicit judicial procedure, upon a finding of a violation, shall be subject to removal from campus, cancellation of contract or other sanctions necessary, in the discretion of KWU, to address the behavior. Not all forms of sexual misconduct will be deemed to be equally serious offenses and KWU reserves the right to impose different sanctions, ranging from verbal warning to expulsion of enrollment or to termination of employment, depending on the severity of the offense. KWU will consider the concerns and rights of both the complainant and the respondent.

If the Coordinator determines that this Policy was violated, the Provost decides the sanctions. Within ten (10) working days from the date the Coordinator's written determination was issued, the complainant and respondent may submit written comments to the Provost regarding the Coordinator report. The Provost will issue a written decision on sanctions in a timely fashion after the expiration of the ten (10) day comment period, and preferably within thirty (30) working days after receipt of the Coordinator's report. The Provost's written decision on sanctions will be issued to the respondent and to the President. Once sanctions are decided, they shall be implemented immediately, regardless of whether the complainant or respondent intends to appeal.

### **I. Appeal of Sanction:**

If the Provost imposes a sanction, the respondent may submit a written appeal to the Appeal Administrator (President) within ten (10) working days from the date of the Provost's written decision.

A respondent's appeal must be in writing and the appeal must state every ground on which the appeal is based.

The appeal does not involve a new investigation. The appeal may only decide, based upon the written information presented, whether the Provost's basis for imposing sanctions, and/or the sanctions themselves, were "arbitrary and capricious." This means that there must be no reasonable basis, under circumstances presented, to uphold the sanctions imposed by the Provost. The appeal must defer to the coordinator for all credibility decisions (e.g., who is telling the truth).

If the Appeal Administrator (President) determines that the Provost's sanctions are arbitrary and capricious, then the Appeal Administrator (President) shall refer the matter back to the Provost for further review and shall provide the Provost with a specific written basis for the "arbitrary and capricious" determination. A decision to remand to the Provost is not subject to appeal.

The Appeal Administrator (President) should rule on an appeal in a timely fashion, preferably within thirty (30) working days after receipt of the appeal. Rulings should be made in writing, with copies to the respondent, Coordinator, and the Provost. A ruling by the Appeal Administrator that affirms the Provost's decision is not subject to further review within the KWU.

## **V. RETALIATION PROHIBITED**

KWU prohibits retaliation of any sort against a person bringing a complaint or otherwise cooperating in the investigation of a complaint under this Policy. Accordingly, the initiation of a bona fide complaint or cooperation in such an investigation will not adversely affect that member's status/position, evaluation, wages, advancement, assigned duties, shifts or any other aspect of the member's experience at KWU. Conversely, because such matters warrant such serious attention, allegations that are found to be intentionally or recklessly false may result in disciplinary action against the accuser. Should a member feel he or she is being retaliated against, he or she should report such action immediately as otherwise described herein.

## **VI. IMPROPER CONDUCT DURING AN INVESTIGATION**

Any member of the KWU community who knowingly provides false information or who refuses to cooperate in an investigation related to this policy will be subject to disciplinary action, potentially including expulsion, suspension, termination of employment, removal from campus, cancellation of contract or any other sanction necessary, in the discretion of the KWU, to address the behavior.

## **VII. INSTITUTIONAL RESPONSES**

### **A. Public Information**

All requests from the media, the campus community at large or the general public, for information concerning an alleged incident of sexual assault, harassment or other forms of sexual misconduct should be directed to the KWU Public Relations. Failure to comply with this requirement may subject a member to possible sanctions including, but not limited to, expulsion, suspension, removal from campus, cancellation of contract and/or termination of employment.

### **B. Public Notification of Incidents**

As required by law, KWU collects and annually reports statistical information concerning sexual misconduct occurring within its jurisdiction. To promote public safety, KWU also alerts the campus community to incidents and trends of immediate concern.

### **C. Relationship Counseling**

Consensual relationships between faculty or staff and students can be problematic. Relationships that might be appropriate in other circumstances are deemed extremely unwise when they occur between an employee of KWU and a person for whom that employee has a professional responsibility. The power differential inherent in such relationships may render any apparent consent void and create grounds for a sexual harassment complaint. KWU prohibits supervisors and managers from dating, engaging in amorous relationships with, or participating in sexual relations who report to them, either directly or indirectly. This prohibition also applies to the relationship between students and faculty or athletic coaches.

## **VIII. EDUCATION AND PREVENTION**

### **A. Educational Training Programs**

KWU provides resources for education and training about, and prevention of sexual assault, harassment, and other forms of sexual misconduct. Members of the KWU community are urged to take advantage of the following on-campus prevention and educational resources, and are required to do so as described in section VIII C below.

- Student Orientation Program, required for all new students, and available to all members wishing to attend.

- Sexual Harassment Program/Sexual Misconduct Program conducted annually on-campus through the Student Development and Provost's Offices

## **B. Background Checks**

Except for adjunct faculty, KWU performs pre-employment background checks on all new employees as a condition of employment.

KWU performs background checks for adjunct faculty before they commence working.

Background checks are not required for current employees with the exception of those employees changing positions. For current employees changing positions, including those filling interim positions, a background check is only required when the new position increases the impact of the perceptible risk factor (contact with protected persons). If an employee experiences a position change within the same or greater perceptible risk factor, a new background check needs to be conducted if it has been five or more years since the last background check.

KWU performs background checks on all key students, camp counselors and program leaders prior to the performance of their duties or participation in the activity engendering this requirement.

KWU will make commercially reasonable efforts to ensure that all third-party contractors and vendors are responsible by contract for complying with these background check standards in regard to their employees, volunteers and subcontractors.

The term "employees" is intended to include administration, faculty (including adjunct faculty) and staff.

## **C. Training**

Sexual misconduct often takes place when there is a power imbalance. The primary purpose of the training is prevention of sexual misconduct by increasing awareness of behavior which constitutes sexual misconduct and the circumstances in which it may occur. Training will also address strategies for a proactive response when there are warning signs that sexual misconduct may occur.

Sexual misconduct prevention training is required for members of the KWU campus community according to the following schedule:

- New employees, within six months of hire;
- All employees, who come in contact with protected persons-annually;
- All employees who do not come in contact with protected persons-biennially;

- Key students, camp counselors and program leaders prior to performing their duties or participating in the qualifying activity;
- Volunteers who come in contact with protected persons-biennially.

KWU's education programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking, which shall include:

- Primary prevention and awareness programs for all incoming students and new employees which will include:
  - A. A discussion of this Policy;
  - B. Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
  - C. Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
  - D. The procedures set forth in this Policy for handling a complaint;
  - E. Possible sanctions or protective measures KWU may impose following a final determination after a KWU investigation of reported incident of rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking;
  - F. Procedures victims should follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information about:
    - The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;
    - To whom the alleged offense should be reported;
    - Options regarding law enforcement and campus authorities, including the victim's option to:
      - Notify proper law enforcement authorities, including on-campus and local police;
      - Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
      - Decline to notify such authorities; and

- The rights of victims and KWU's responsibilities regarding orders of protection, not contact orders, restraining orders, or similar lawful orders issued by a criminal and/or civil court;
- G. Notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community; and
- H. Information concerning options victims have for available assistance. If applicable, in changing academic classes, on-campus living, and working situations, if so requested by the victim and if such accommodations are reasonable available, regardless of whether the victim chooses to report the incident to campus police or to local law enforcement, and
- I. Ongoing prevention and awareness campaigns for students and faculty that will include the above information.

*Sexual Harassment may also be reported outside of KWU to:*

- Kansas Human Rights Commission 785-296-3206  
fax: 785-296-0589  
TTY 785-296-0245)  
<http://www.khrc.net/complaint.html>
- Office of Civil Rights (Region VII) in the U.S. Department of Education  
(Students) 816-268-0550  
<http://www.hhs.gov/ocr/civilrights/complaints/index.html>
- Equal Employment Opportunity Commission, St, Louis District (Employees) 1-800-669-4000  
fax:314-539-7894  
TTY: 1-800-669-6820)  
<http://www.eeoc.gov/employees/howtofile.cfm>