

# **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**

**Updated: March 6, 2014**

**Updated: June 7, 2014**

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

**Updated: October 4, 2019**

**AMENDED POLICY ADOPTED BY BOARD OF TRUSTEES: July 10, 2020**

The Kansas Wesleyan University ("KWU") Faculty Handbook, Employee Handbook, Student Handbook, Academic Catalog, and all other KWU policies, documents, and written materials addressing or covering sexual assault, misconduct and/or sexual harassment, are collectively referred to herein as the "Handbooks," and are hereby amended and modified to include the following Policy on Sexual Assault, Harassment, & Other Forms of Sexual Misconduct ("the Policy") 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 Policy, the provisions of this Policy shall prevail and be interpreted as superseding those in the Handbooks.

## **I. POLICY**

KWU does not discriminate on the basis of sex in the education programs or activities that it operates. The requirement not to discriminate extends to admission and employment. With respect to its employees, KWU prohibits inappropriate conduct that may be not be a violation of the law but which is still inappropriate for the workplace. KWU reserves the rights to investigate and discipline its employees for conduct that does not fall under the definitions of Title IX and Non-Title IX sexual misconduct, sexual harassment or sexual assault. Any investigation and/or discipline pursuant to this or any other KWU policy applicable to its employees should not be considered an acknowledgement that any laws were violated, but only that KWU considered the conduct inappropriate and in violation of its policies and standards, which prohibit inappropriate conduct more broadly than applicable law. Inquiries about the application of Title IX may be referred to KWU's Title IX Coordinator, to the Assistant Secretary of Education for Civil Rights or both.

Title IX and non-Title IX sexual misconduct, sexual harassment, and sexual assault are unacceptable and will not be tolerated at KANSAS WESLEYAN UNIVERSITY and in the KWU community. 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. Prohibited conduct under this Policy may include off-campus or off-premises conduct. A report of Title IX and non-Title IX sexual misconduct, sexual assault, or sexual harassment will be dealt with reasonably, timely and appropriately and in accordance with applicable law. Confidentiality will be maintained to the greatest extent possible. However, KWU may require some information to be shared in order to investigate anyone accused of sexual misconduct, sexual assault, or sexual harassment.

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

Violators of this Policy 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 in accordance with applicable law. Proceedings and/or sanctions under this policy do not in any way limit KWU's ability and discretion to discipline employees or students under its other policies. Prosecution by civil or criminal authorities may also occur.

## **II. SEXUAL HARASSMENT DEFINITIONS**

### **A. Title IX Sexual Harassment**

KWU prohibits sexual harassment as defined by Title IX. Title IX sexual harassment is conduct on the basis of sex that satisfies one or more of the following:

1. An employee of KWU conditions the provision of an aid, benefit, or service of KWU on a person's participation in unwelcome sexual conduct; or
2. Unwelcome conduct determined by a reasonable person to be so severe, persuasive, and objectively offensive that it effectively denies a person equal access to KWU's education program or activity; or
3. Conduct that constitutes one of the following crimes:
  - a. "Sexual assault," which means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. 20 U.S.C. 1092(f)(6)(A)(v).
  - b. "Dating violence," which 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, and (iii) the frequency of interaction between the persons involved in the relationship. 34 U.S.C. 12291(a)(10); or
  - c. "Domestic violence," which includes felony or misdemeanor crimes of violence committed by a current or former spouse, domestic partner, or other long-term romantic relation 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 who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. 34 U.S.C. 12291(a)(8); or

- d. "Stalking," which 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. 34 U.S.C. 12291(a)(30).

For purposes of this policy, the sexual harassment must be against a person in the United States.

For purposes of (A)(2) above, "education program or activity" includes locations, events, or circumstances over which the KWU exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by KWU. "Education program or activity" also encompasses all of the operations of KWU and includes computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of KWU.

## **B. Non-Title IX Sexual Harassment**

KWU also prohibits sexual misconduct, sexual harassment, and sexual assault that does not meet the definition of Title IX sexual harassment. If conduct in a report meets both the definition of Title IX sexual harassment and non-Title IX sexual harassment, the report will go through the Title IX grievance process. However, if after the investigation, KWU finds that the conduct only meets the definition of non-Title IX sexual harassment, the conduct may be dismissed from the Title IX grievance process and continue through the non-Title IX grievance process laid out in this Policy.

Non-Title IX sexual harassment definitions apply equally to behavior in-person and behavior online (e.g. social media, blogs, email).

Additionally, as pertains to its employees and irrespective of this policy, KWU reserves the right to investigate and discipline its employees for conduct that does not fall under the definitions of Title IX and/or Non-Title IX sexual misconduct, sexual harassment or sexual assault. Any investigation and/or discipline pursuant to this or any other KWU policy applicable to its employees should not be considered an acknowledgement that any laws were violated, but only that KWU considered the conduct inappropriate and in violation of its policies and standards, which prohibit inappropriate conduct more broadly than applicable law.

### **1. Sexual Misconduct**

This policy defines sexual misconduct as any threat, act or omission of a sexual nature 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.

## 2. 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 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:

- Unwelcome physical contact, including touching on any part of the body, kissing, hugging, or standing so close as to brush up against another person;
- Requests for sexual favors either directly or indirectly;
- 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;
- 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
- 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:

- Unwelcome sexual flirtations, advances, jokes, or propositions;

- Unwelcome comments about an individual's body or personal life;
- Open discussion of intimate details of one's own personal life;
- The use of sexually degrading words to describe an individual; or
- The display of objects, pictures, cartoons, or writings that might be perceived as offensive, or sexually suggestive.

KWU requires that faculty 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, or 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.

### 3. Sexual Assault and Sexual Violence

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.

Additionally, sexual violence is prohibited 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.

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

- Rape – K.S.A. 21-5503
- Sexual Battery; Aggravated 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; Aggravated Liberties with a Child – K.S.A. 21-5506
- Lewd and Lascivious Behavior – K.S.A. 21-5513
- Criminal Sodomy; Aggravated Criminal Sodomy – K.S.A. 21-5504
- Incest; Aggravated 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)

## **III. DEFINITIONS APPLICABLE TO BOTH TITLE IX AND NON-TITLE IX SEXUAL HARASSMENT**

### **A. 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.

## **B. Preponderance of the Evidence is the 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. This preponderance of the evidence standard is applied to formal complaints against students and against faculty.

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

This policy defines "camp counselors" and "program leaders" as those individuals 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 (defined below).

## **D. 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.

### **1. Elements of Consent:**

- a. 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.
- b. 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.



- c. Silence does not equal consent.
- d. 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.
- e. Any party has the right to change their mind and withdraw consent at any time.
- f. A prior sexual history between the participants does not constitute consent.
- g. A person's ability to freely give consent may be jeopardized if the initiator is in a position of power, influence or control over the person. Examples might include if the initiator is a supervisor, instructor, advisor, or counselor of the person.

#### **E. 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.

#### **F. Investigators**

The investigators are those persons appointed by the Title IX Coordinator as the investigations/inquiry team under this Policy, who conduct investigations and inquiries to assist in resolving complaints of violations of this Policy at KWU. Each complaint or report will have two (2) investigators assigned who work collaboratively to interview witnesses and write an investigation report. The investigators will attest to not having a conflict of interest or bias against the specific complainant and respondent and against the parties' positions generally. Investigators will conduct investigations of complaints made asserting violation of this Policy with prompt and thorough investigation, while acting as neutral parties.

#### **G. 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.

#### **H. 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.

#### **I. 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.

- The Title IX Coordinator can be contacted as follows: Bridget Weiser, 785.833.4325, [bridget@kwu.edu](mailto:bridget@kwu.edu), KWU Office of Student Development, 100 E. Claflin Avenue, Salina, Kansas, 67401.
- The Deputy Title IX Coordinator can be contacted as follows: Becky Mathews, KWU HR Specialist, 785.833.4305, [becky.mathews@kwu.edu](mailto:becky.mathews@kwu.edu), KWU Business Office, 100 E. Claflin Avenue, Salina, Kansas, 67401.

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

For Title IX sexual harassment, the Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. See definition of "supportive measures" for additional information in Section VI(A)(8).

For Title IX sexual harassment, the Title IX Coordinator is also responsible for effective implementation of any disciplinary remedies. Where a final written determination indicates remedies will be provided, the Title IX Coordinator and complainant will discuss what remedies are appropriately designed to preserve and/or restore the complainant's equal access to education.

## **J. 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.

## **IV. PROCEDURES AND SUPPORT FOLLOWING AN ACT OF TITLE IX OR NON-TITLE IX SEXUAL ASSAULT, HARASSMENT, OR SEXUAL MISCONDUCT**

A member of KWU's community who is the victim of Title IX or non-Title IX sexual harassment, 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, sexual harassment, or 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 Human Resources, as soon as possible. KWU will act to investigate all complaints, both formal and informal, to take appropriate actions based on the preponderance of the evidence,

against any student, faculty member, staff member, administrator, or other KWU employee.

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 assault or misconduct is urged to seek appropriate medical evaluation as promptly as possible.

- For life-threatening conditions, call 911.

For other situations and additional information please see the APPENDIX TO PROCEDURES and SUPPORT FOLLOWING AN ACT OF Title IX OR Non-Title IX SEXUAL ASSAULT, HARASSMENT, OR SEXUAL MISCONDUCT.

#### **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. The Domestic Violence Association of Central Kansas ("DVACK") in Salina, Kansas may provide support, as applicable. The DVACK hotline number is 800.874.1499.

Information, support and advice are available for anyone who wishes to discuss issues related to sexual assault, harassment or 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 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/or the Title IX Coordinator. Employees should use Human Resources and/or the Title IX Coordinator.

#### **D. Formally Reporting an Act of Sexual Assault, Sexual Misconduct or Sexual Harassment**

A person who is the victim of Title IX or non-Title IX sexual assault, harassment or 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, who can be contacted as follows: Bridget Weiser, 785.833.4325, [bridget@kwu.edu](mailto:bridget@kwu.edu), KWU Office of Student Development, 100 E. Claflin Avenue, Salina, Kansas, 67401.
- The Deputy Title IX Coordinator can be contacted as follows: Becky Mathews, KWU HR Specialist, 785.833.4305, [becky.mathews@kwu.edu](mailto:becky.mathews@kwu.edu), KWU Business Office, 100 E. Claflin Avenue, Salina, Kansas, 67401.
- A board of trustees member can also be contacted for reporting at [trustee@kwu.edu](mailto:trustee@kwu.edu).

Consistent with federal, state, and local law, any employee, regardless of role, tenure, or compensation, or any volunteer or contractor who has knowledge of alleged or actual sexual abuse involving a minor or believes in good faith that they have witnessed a possible warning sign of sexual abuse, is required to make a formal report, as soon as possible, to local law enforcement, child protective services, or similar government agency, as well as the Title IX Coordinator designated above. Additionally, the employee, volunteer, or contractor must comply with any applicable federal, state, or local laws requiring reporting of allegations or conduct constituting sexual abuse. The minor's parent or guardians will be notified pursuant to applicable law.

#### **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 in this Policy. Where applicable, faculty or staff should consult the Title IX 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.

### **V. CONFIDENTIALITY OF INFORMATION**

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 applicable law, 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 applicable law and 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, complainants, the alleged victim and the respondent.

The degree to which confidentiality can be protected, however, depends upon applicable law and KWU's legal duty to respond to the information reported.

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.

## **VI. RESPONSE TO TITLE IX SEXUAL HARASSMENT**

As required by Title IX, KWU will respond promptly in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment as defined by Title IX in one of its education programs or activities against a person in the United States. KWU will treat complainants and respondents equitably by offering supportive measures to a complainant and by following the outlined grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

KWU will maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of Title IX sexual harassment. In each instance, KWU will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to KWU's education program or activity. If KWU does not provide a complainant with supportive measures, then KWU will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit KWU in the future from providing additional explanations or detailing additional measures taken.

Where KWU discovers that the alleged conduct, if proven, does not constitute Title IX sexual harassment, KWU will investigate the complaint pursuant to Section VII, Procedure for Handling Non-Title IX Complaints.

### **A. Definitions Applicable to This Section**

1. **Actual knowledge** is defined as notice of sexual harassment or allegations of sexual harassment to KWU's Title IX Coordinator or any official of KWU who has authority to institute corrective measures on behalf of KWU. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge under Title IX. This standard is not met when the only official of KWU with actual knowledge is the alleged perpetrator of the sexual harassment. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual

harassment or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of KWU under Title IX.

2. **Complainant** is defined as an individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. At the time the formal complaint is filed, the complainant must be participating in or attempting to participate in an education program or activity of KWU.

3. **Decision Maker** is defined as someone other than the Title IX Coordinator or investigator(s), as designated by KWU. The decision maker oversees the live hearings and decides whether a question is relevant and explains any decision to exclude a question based on relevancy. At the conclusion of the live hearing, the decision maker makes a written determination, which includes a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions KWU imposes on the respondent, and whether remedies designed to restore or preserve equal access to KWU's education program or activity will be provided by KWU to the complainant. The Title IX Coordinator is responsible for effective implementation of any remedies.

4. **Education program or activity** includes locations, events, or circumstances over which KWU exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

5. **Formal complaint** is defined as a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that KWU investigate the allegations of sexual harassment. At the time the formal complaint is filed, the complainant must be participating in or attempting to participate in an education program or activity of KWU.

The formal complaint filed by the complainant must contain the physical or digital signature of the complainant, or otherwise indicate that the complainant is the person filing the formal complaint. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by email.

Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator does not become the complainant or otherwise a party.

6. **Parties** means the complainant and the respondent. The Title IX Coordinator is never a party even where the Title IX Coordinator submits the complaint.

7. **Respondent** is defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.

8. **Supportive measures** are defined as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal

complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to KWU's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or KWU's educational environment, or deter sexual harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

KWU will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of KWU to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

### **B. Step 1: Availability of Supportive Measures**

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Title IX Coordinator will also offer supportive measures to the respondent.

If the complainant and/or the Title IX Coordinator do not file a formal complaint, KWU's response to Title IX sexual harassment ends at Step 1.

### **C. Step 2: Interim Action During Pendency of Grievance Process**

KWU may remove a respondent to a Title IX complaint from KWU's education program or activity on an emergency basis after it completes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. KWU will provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

KWU may also place a non-student employee respondent on administrative leave during the pendency of the grievance process.

### **D. Step 3: The Grievance Process**

#### **1. Tenets of the Grievance Process**

a. KWU will require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.



b. The Title IX Coordinator, investigator, decision maker, or any person designated by KWU to facilitate an informal resolution process, may not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

c. The respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

d. The grievance process shall conclude within 60 calendar days, if not sooner. There may be temporary delay or limited extension with written notice to the complainant and the respondent of the delay or extension and the good cause reasons for the action. Good cause, includes but is not limited to 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.

e. Not all forms of sexual harassment will be deemed to be equally serious offenses and KWU reserves the right to impose different disciplinary sanctions and remedies, ranging from verbal warning to expulsion of enrollment or to termination of employment, depending on the severity of the offense. For KWU employees, disciplinary sanctions and remedies are up to and including removal from campus and cancellation of contract and/or termination of employment. For KWU students, disciplinary sanctions and remedies include but are not limited to, modification of on-campus housing arrangements, probation, and expulsion.

f. KWU and its agents will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

g. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on KWU and not on the parties provided that KWU cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless KWU obtains that party's voluntary, written consent to do so for a grievance process.

## 2. Consolidation of Formal Complaints:

KWU may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

## 3. Written Notice of Formal Complaint(s):

Upon receipt of a formal complaint, KWU will provide the following written notice to the parties who are known: (1) notice of KWU's grievance process, including

the informal resolution process; and (2) notice of the allegations of sexual harassment potentially constituting sexual harassment as defined by Title IX regulations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.

a. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under Title IX, and the date and location of the alleged incident, if known.

b. The written notice will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

c. The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The advisor can participate in any related meeting or proceeding during the investigative and live hearing stages of the grievance process. If a party does not have an advisor present at the live hearing, KWU will provide without fee or charge to that party, an advisor of KWU's choice, who may be, but is not required to be, an attorney, to conduct cross-examination.

d. The written notice will inform the parties of any provision in KWU's employee code of conduct and student handbook that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

e. If, in the course of an investigation, KWU decides to investigate allegations about the complainant or respondent that are not included in the written notice, KWU will provide notice of the additional allegations to the parties whose identities are known.

#### 4. Dismissal of Formal Complaint Under Title IX:

If the conduct alleged in the formal complaint does not constitute sexual harassment as defined by Title IX even if proved (i.e. did not occur in KWU's education program or activity or did not occur against a person in the United State), then KWU will dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. **Dismissal does not preclude action under the non-Title IX provisions of this Policy, or any other KWU policy. Please see Section VII for information regarding the investigation of a non-Title IX complaint.**

a. KWU **may** dismiss the Title IX formal complaint or any allegations therein, if at any time during the investigation or hearing, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by KWU; or specific circumstances prevent KWU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Dismissal does not preclude action under the non-Title IX provisions of this Policy, or

any other KWU policy. Please see Section VII for information regarding the investigation of a non-Title IX complaint.

b. Upon a dismissal required or permitted under Title IX, KWU will promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties. Depending on the basis for dismissal of the Title IX complaint, the complaint will move to the non-Title IX process.

5. Investigation of Formal Title IX Complaint:

a. KWU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

b. KWU will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding.

c. KWU applies the following restrictions and decorum rules equally to both parties' advisors:

- i. A party may have only one advisor during the grievance process;
- ii. Advisors must maintain confidentiality of the parties and proceedings;
- iii. Advisors cannot unreasonably delay the grievance process;
- iv. Advisors may not badger a witness;
- v. Advisors must be respectful to all witnesses, parties, the investigator, Title IX Coordinator, and the decision maker; and
- vi. Advisors must in good faith proffer relevant questions during the live hearing;

Repeated failure to follow these restrictions and decorum rules will result in the advisor being removed from the investigation and/or live hearing.

d. KWU will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

e. KWU will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal Title IX complaint, including the evidence upon which KWU does not intend to rely in reaching a determination regarding responsibility and

inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

f. Prior to completion of the investigative report, KWU will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. KWU will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

g. KWU will create an investigative report that fairly summarizes relevant evidence and, at least ten (10) calendar days prior to a live hearing send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

## 6. Live Hearings

a. Live hearings will involve the following individuals:

- i. Complainant and his/her advisor;
- ii. Respondent and his/her advisor;
- iii. Hearing officer who will maintain decorum and determine relevance;
- iv. Decision maker who will determine responsibility and sanctions;
- v. Parties' witnesses;
- vi. Possibly technology support; and
- vii. University representative selected at the discretion of the Hearing Officer.

b. At the request of either party, KWU will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

c. If a party does not have an advisor present at the live hearing, KWU will provide without fee or charge to that party, an advisor of KWU's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

d. Each party's advisor has an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

e. Each party's advisor is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The complainant and respondent are prohibited from directly conducting cross-examination; there is no right to self-representation. Cross-examination will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

f. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

g. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

h. If a party or witness does not submit to cross-examination at the live hearing, the decision maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

i. KWU will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

#### 7. Determination Regarding Responsibility:

The decision maker will issue a written determination simultaneously to both parties regarding responsibility by applying the standard of evidence in Section II(B). The determination regarding responsibility becomes final either on the date that KWU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The written determination will include the following components:

a. Identification of the allegations potentially constituting sexual harassment as defined by Title IX;

b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the KWU's code of conduct to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions KWU imposes on the respondent, and whether remedies designed to restore or preserve equal access to KWU's education program or activity will be provided by KWU to the complainant; and
- f. KWU's procedures and permissible bases for the complainant and respondent to appeal.

#### **E. Step 4: Informal Resolution Process**

1. KWU will not require informal resolution as a condition of enrollment, continuing enrollment, employment, continuing employment, enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section.

2. KWU's informal resolution process will consist of a mediation between the Parties. Advisors may not be present.

3. The facilitator of the informal resolution process will be trained on the tenets of the grievance process and not have a bias or conflict of interest against the Parties, specifically or generally.

4. KWU will not require the parties to participate in an informal resolution process and will not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility KWU may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that KWU:

- a. Provides to the parties a written notice disclosing – the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

- b. Obtains the parties' voluntary, written consent to the informal resolution process; and

- c. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student or in other cases where informal resolution is inappropriate, such as complaints that involve allegations of sexual

assault, rape, statutory rape, incest or involving violence resulting in significant harm to others.

d. The grievance process time period provided in IX(D)(1)(d) may be reasonably extended where a party opts into the informal process and then opts out.

## VII. PROCEDURE FOR HANDLING NON-TITLE IX COMPLAINTS

Conduct that meets the definition of a Non-Title IX complaint will follow the procedure set forth in this Section. In most cases, complaints will begin in the Title IX grievance process (Section VI) until a definitive determination can be made that the conduct does not constitute Title IX sexual harassment. **Complaints filed according to the Title IX procedure may be handled pursuant to this Section if it is determined after the Title IX investigation phase that the complaint does not meet Title IX's definition of sexual harassment** (e.g., the sexual harassment is against a person not in the United States, the sexual harassment did not occur at a building owned or controlled by a student organization officially recognized by KWU).

### A. Definitions Applicable to This Section

1. **Camp Counselors and Program Leaders** are 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.

2. **Complainant** is the person who makes either a formal or informal complaint asserting a violation of this Policy. The complainant does not need to be the victim of reported misconduct, and KWU understands that persons subject to coercion, threats, or those in a relationship with an imbalance of power may not feel free to make a complaint. Accordingly, KWU encourages reporting of prohibited conduct by witnesses and knowledgeable persons as well as those who believe they have been subjected to prohibited conduct hereunder.

3. **Hostile Environment Caused by 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.

4. **Non-Consensual Sexual Contact** is any intentional sexual touching with any body part or object, by any person upon another without consent and/or by force.

5. **Non-Consensual Sexual Intercourse** means sexual contact, usually of genitals, by any person upon another without consent and/or by force. It includes oral, anal and vaginal penetration, however slight, to any degree, with any object.

6. **Respondent** is the person alleged to have violated this Policy.

7. **Sexual Intimidation** involves one person threatening another person so that the first person will commit a sex act against the other person; engaging in indecent exposure; or stalking a person who reasonably perceives the stalker is pursuing a romantic and/or sexual relationship.

**B. Step 1- The Initial Report:**

1. **Manner of Reporting Complaints.** Any person covered by the Policy who wishes to make a complaint hereunder should: (a) Report the complaint to the Title IX Coordinator; (b) 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 Title IX Coordinator); or (c) If the matter complained of involves sexual harassment between two or more employees of KWU, report the complaint to Human Resources. Students or graduate students may also report their complaint to the Office of the Vice President for Student Development or any faculty member. Faculty members receiving reports under this Policy should report the matter to the Title IX Coordinator.

Anonymous complaints cannot be ignored. While KWU endeavors to investigate all complaints, including anonymous complaints, 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. If reported orally, notes may be taken by the Coordinator and/or an investigator, who may request the complainant review the notes and acknowledge that they are correct and complete, or may request the complainant to provide a written statement. 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 alleged victim's or complainant's employment, learning or living environment, or ability to participate in KWU programs or activities; and the name and title of the person alleged to have engaged in the conduct.

It is important for all persons to preserve any relevant evidence related to the complaint, including electronic communications such as text messages and email, photographs, and physical evidence.

2. **Presence of Advocate.** In the event of a sexual violence or stalking complaint, during the interview of complainant or alleged victim, a representative from DVACK or other appropriate advocate can be present.

3. **Reporting of Alleged Criminal Conduct.** 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 and/or an investigator can assist the complainant in making the report to police. The Title IX Coordinator and/or an investigator may also advise the complainant that he/she may decline to notify the police. Complainants should understand that the criminal justice system and this Policy have



separate procedures, and if the complainant wishes for both processes to move forward, the report must be made separately to KWU and police authorities. KWU is not obligated to make a police report where the complainant refuses to do so or does not cooperate in such reporting. Complainants or alleged victims, as applicable, 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 in enforcing this order on campus.

**4. No Jurisdiction.** 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.

**5. Interim Measures and Actions.** The Title IX Coordinator will also consider, and may consult with the President as to, whether interim measures should be put in place to ensure accommodations for the complainant or alleged victim. Interim measures will be determined on a case by case basis and may include one or more of the following measures:

*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;
- Provision of an escort to ensure the student can move safely between classes and KWU activities;
- 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;
- Skyping or other Electronic Means of Class Participation;
- No Contact Directives; and
- Separate Exam times and locations.

*For employees:*

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

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

Depending on the specific nature of the allegation, interim actions applicable to the respondent may include, but are 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; and
- Administrative leave with or without pay.

**C. 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.

**D. Step 3- Initial Evaluation of the Complaint:**

The Title IX investigators will interview the complainant and/or alleged victim as soon as possible after the initial report is made 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 investigators will proceed with an investigation if a report alleges conduct that would constitute a violation of this policy.

**E. Step 4- Initial Summary of Complaint:**

The investigators may make an initial summary of the complaint (particularly when the complaint was made verbally) from the initial contact with the complainant, and/or witnesses with first-hand knowledge as to the reported conduct, and review of the written complaint, if any. After the initial summary of the complaint is made, the complainant, or alleged victim, where appropriate, may be given an opportunity to review the summary to verify its completeness and accuracy.

**F. Step 5- Investigation/Inquiry and Written Report:**

Following the initial evaluation of the complaint, the investigation/inquiry team will proceed as follows.

**1. Contact with Respondent.** The investigators will attempt to make contact with and interview the respondent. This will normally be completed within ten (10) working days of the initial report, absent extenuating circumstances. Respondent will be provided with a copy of the complaint, if it was made in writing, and will be provided with a copy of the initial summary of the complaint, if one was made. The investigators will also provide the respondent with a copy and/or an explanation of the procedures under this Policy, and will admonish the respondent not to retaliate against the complainant, alleged victim, or others involved in the investigation, which retaliatory conduct is prohibited.

After the initial interview with the respondent, a written copy of the notes 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 investigation/inquiry team following the first contact and interview with the investigators. Additionally, the respondent will be informed that the investigation/inquiry will proceed with or without the respondent's response. The respondent may also provide evidence to the investigators relating to any allegations contained in the complaint or which is relevant to the investigation, and may identify in writing to the investigators persons who are witnesses who can provide first-hand information about the subject matter of the complaint.

**2. Response.** The investigators will receive, clarify and evaluate the respondent's responses to the complainant. The investigators should consider evidence provided by the respondent and reasonably and appropriately include it in the written report to be submitted to the Coordinator. The investigation/inquiry team is not required to interview persons identified merely to provide character information about the respondent, complainant or the alleged victim, and may reasonably limit its inquiry to sources which might provide direct and relevant evidence relating to the conduct identified in the complaint and investigation. In the event the respondent provides evidence, including first-hand accounts, which controvert the allegations of the complainant or victim, such information should normally be provided to the complainant or victim in the course of the investigation and they should be given an opportunity to respond.

**3. Investigate.** The investigators will interview any persons with specific knowledge of the alleged incident(s) and review relevant policies, procedures, files, documents and records.

**4. Written Report.** The investigators will prepare a written report of their investigation and submit it to the Coordinator, normally within fifteen (15) working days from the point that investigators receive notification of their first contact with respondent, absent extenuating circumstances. The written report should include the investigators' credibility assessments of the witnesses and evidence gathered. If the Coordinator has any questions about the contents of the written report, or any evidence cited therein, the investigators will conduct any necessary follow-up and/or provide clarification to the Coordinator as soon as practicable.

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

Where a complaint is dismissed from the Title IX grievance process after the Title IX investigation phase, the complaint moves to Step-6 of the Non-Title IX grievance process.

The Title IX Coordinator shall review the investigators' written report, will consider all the information therein, and shall determine whether or not the respondent's reported conduct violated this Policy, based on the preponderance of the evidence and the credibility determinations made by the investigators. The Coordinator will issue a written determination, normally with fifteen (15) working days of receipt of the investigators' written report, absent extenuating circumstances. The written determination shall be provided to the complainant and/or the victim, as appropriate, as well as to the respondent or his/her legal counsel as appropriate and to the President and Provost. If necessary to protect the identity of witnesses or to maintain confidentiality of personnel or other privileged matters, the Coordinator may redact portions of the written determination provided to the complainant, alleged victim and/or respondent. No redactions should be made in the written determination provided to the President or Provost.

The Coordinator's written determination will include findings of facts, a determination of whether the respondent violated this Policy, and should reference this Policy which provides 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 Provost will determine appropriate disciplinary action. Either party may appeal the Coordinator's written determination on one of the three bases outlined in Section VIII.

### **H. Step 7 – Disciplinary 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, 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, assault and/or harassment 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 victim or complainant and the respondent.

If the Coordinator determines that this Policy was violated, the Provost decides the sanctions. Within ten (10) calendar 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's report and written determination. The Provost will issue a written decision on sanctions in a timely fashion after the expiration of the ten (10) calendar day comment period, and within twenty (20) calendar 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, unless they are appealed based on one of the three bases outlined in Section VIII.

Where there is a final determination that a faculty member has violated this Policy, such outcome and any resulting sanction cannot be grieved as an adverse action under the grievance procedures in the Faculty Handbook.

### **VIII. APPEAL OF DECISION MAKER'S OR COORDINATOR'S FINDINGS OR PROVOST'S SANCTIONS:**

For Title IX and non-Title IX claims of sexual harassment, the complainant and respondent may appeal from a determination regarding responsibility and from a dismissal of a complaint. In the case of non-Title IX claims, an alleged victim who was not the complainant but cooperated in an investigation initiated by a third-party may also be entitled to appeal the findings.

The parties in a Title IX and non-Title IX grievance process may appeal the outcome on three bases: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and (3) Title IX Coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A Title IX complainant entitled to remedies need not file an appeal to challenge KWU's selection of remedies; instead, the Title IX Coordinator is responsible for effective implementation of remedies. This permits a Title IX complainant to work with the Title IX Coordinator to select and effectively implement remedies designed to restore or preserve the complainant's equal access to education.

The appellant must submit an appeal to the Title IX Coordinator to be considered by the Appeal Team. **An appeal must state every ground on which the appeal is based. The appeal must be submitted in writing within seven (7) calendar days from the date of the written determination.** KWU will notify the other party in writing when an appeal is filed. The other party will have **seven (7) calendar** days from the date the appeal is submitted to provide a written statement in support of, or challenging the outcome.

The Title IX Coordinator shall appoint the Appeal Team, consisting of two members of the KWU Faculty and/or staff. The Appeal Team will not include the decision maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

On appeal, the Appeal Team does not conduct a new investigation. The Appeal Team may review the written investigation report of the investigation/inquiry team, as well as the written determination, and any other information requested by the Appeal Team. The Appeal Team may only decide, based upon the information presented,

whether the written determination was “clearly erroneous” (i.e., plainly in error). The Appeal Team will defer to the investigation/inquiry team and the written determination 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.

The Appeal Team should rule on an appeal in a timely fashion, preferably within twenty (20) calendar days after receipt of the initial appeal. Rulings should be made in writing describing the result of the appeal and the rationale for the result, with copies sent simultaneously to the complainant; alleged victim, where appropriate; respondent; President; Provost; and Coordinator.

For all appeals, the determination regarding responsibility becomes final either on the date that KWU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## **IX. TITLE IX RECORDKEEPING**

KWU will maintain for a period of seven (7) years records of:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to KWU's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

## **X. 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. No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

Accordingly, the initiation of a bona fide complaint under this Policy 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, charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation prohibited, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Should a member feel he or she is being retaliated against, he or she should report such action immediately as otherwise described herein.

## **XI. 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 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, such as a student or subordinate employee. 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 with employees who report to them, either directly or indirectly. This prohibition also applies to the relationship between students and faculty or athletic coaches.

## **XII. TRAINING PURSUANT TO TITLE IX**

KWU provides training to any individual designated by KWU as a Title IX Coordinator, investigator, decision maker, or any person designated by KWU to facilitate an informal resolution process.

Training will cover the following topics including but not limited to: the definition of sexual harassment, the scope of KWU's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision makers will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

These training materials are publicly available on KWU's website.

### **XIII. 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.

- 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**

KWU performs pre-employment background checks on all new employees as a condition of employment. This includes administration, faculty, adjunct faculty and staff.

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 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.

### **C. Other Sexual Harassment Training**

Sexual harassment, assault or other misconduct often takes place when there is a power imbalance. The primary purpose of the training is prevention of such misconduct by increasing awareness of behavior which constitutes these types of 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 harassment or misconduct may occur.

Sexual harassment and 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 annually;
- 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, 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.

# APPENDIX

## **APPENDIX: PROCEDURES and SUPPORT FOLLOWING AN ACT OF Title IX OR Non-Title IX SEXUAL ASSAULT, HARASSMENT, OR SEXUAL MISCONDUCT**

Anyone – applicant, employee, student, or staff –who is the victim of Title IX or non-Title IX sexual assault, harassment or 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 immediately contact:

- The Title IX Coordinator, who can be contacted as follows: Bridget Weiser, 785.833.4325, [bridget@kwu.edu](mailto:bridget@kwu.edu), KWU Office of Student Development, 100 E. Claflin Avenue, Salina, Kansas, 67401.
- The Deputy Title IX Coordinator who can be contact as follows: Becky Mathews, KWU HR Specialist, 785.833.4305, [becky.mathews@kwu.edu](mailto:becky.mathews@kwu.edu), KWU Business Office, 100 E. Claflin Avenue, Salina, Kansas, 67401.
- Or a board of trustees member who can be contacted at [trustee@kwu.edu](mailto:trustee@kwu.edu).

### **A. Victims/Survivors**

1. Victims/survivors are encouraged to receive medical attention. Salina Regional Health Center (SHRC) is equipped with a SANE/SART (Sexual Assault Nurse Examiner/Sexual Assault Response Team) program. The SANE nurse will be able to assist you in receiving a thorough exam and collecting evidence.
2. Victims/survivors are encouraged to contact the Salina Police Department to report the assault.
3. Victims/survivors are encouraged to contact The Domestic Violence Association of Central Kansas (DVACK). The DVACK Sexual Assault Victims Advocate can come to the hospital, be with you during the exam, offer support during interviews with investigators and/or campus officials, and be present with you during any and all court proceedings. DVACK can be reached 24 hours a day/7 days a week at 785.827.5862 or 1.800.874.1499.
4. Victims/Survivors are also encouraged to contact University officials for appropriate action.
  - a. If the assault occurs in a Campus Residence Hall, the victim/survivor should contact the on-duty RA/RD (Resident Assistant/Resident Director) at the following phone numbers:
    - a. Duty phone 1: Pfeiffer Hall: 785.643.5160
    - b. Duty phone 2: Wesley Hall: 785.577.6214
    - c. Duty phone 3: Wilson Hall: 785.577.3971
    - d. Student Development (during business hours): 785.833.4329
  - b. If the assault occurs in the Campus Apartments or on campus grounds, (not a Residence Hall) the victim/survivor should contact the Vice President for Student Development (785.833.4329)

- c. If the assault occurs off-campus and the victim/survivor or accused student resides in on-campus housing the victim/survivor should contact the Vice President for Student Development (785-833-4329).
- d. If the assault occurs off-campus and the student resides off-campus, the student should contact the Salina Police Department, the Salina Regional Health Center, and/or DVACK. The victim/survivor should also contact the Vice President for Student Development (785.833.4329).
- e. If a student is accused, report it to the Vice President for Student Development.
- f. If an employee is accused, report it to the Provost.

**B. University Employees/Students** (when made aware of an assault incident)

- 1. Encourage victim/survivor to make a report to Salina Police Department.
- 2. Encourage Victim/Survivor to contact DVACK for support and counseling from the Sexual Assault Victims Advocate.
- 3. Crisis Intervention
- 4. Help in receiving medical attention
- 5. Counseling
- 6. Sexual Assault Support Group
- 7. PFA (Protection from Abuse), PFS (Protection from Stalking), Restraining Order
- 8. Advocacy (criminal justice system, civil justice system, SPD Investigation) Personal Advocacy (referrals, navigation of action through University System, etc.).
- 9. University employees, contact the Office of Student Development or the Office of Academic Affairs for guidance on the next step.
  - a. Maintain confidentiality
  - b. Assist in obtaining services from DVACK
  - c. Assist and support Victim/survivor in contacting Salina Police Department and University Officials if the victim/survivor consents to such action. (The staff member may be required to report incident, but will only divulge victim's name if consent has been given, except in extenuating circumstances.)
  - d. Assist in changing academic programming, current housing, etc., if requested.
  - e. Allow victim/survivor and Person Accused to have non-participating support person present for all interviews.
  - f. When no police investigation is warranted, the Office of Student Development will conduct an investigation by responding to the allegations and handing down discipline, if needed, which is consistent with the findings of the Judiciary Committee and finalized with the approval of the President of KWU.

### **C. Other Places to Report Outside of KWU**

1. Kansas Human Rights Commission  
785.296.3206  
fax: 785.296.0589  
TTY 785.296.0245)  
<http://www.khrc.net/complaint.html>
2. 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>
3. 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>