

# KCTCS Sexual Misconduct Procedure<sup>1</sup>

## INTRODUCTION

### *Application*

This procedure applies to all employees regardless of status, type, or classification. In addition, students, volunteers, guests, and visitors within the Kentucky Community and Technical College System shall be subject to this procedure and the applicable policy.

The KCTCS President is responsible for ensuring this procedure is implemented at the KCTCS System Office and delegates to each College President/CEO the responsibility to ensure this procedure is implemented consistently at the college.

The use of the term “KCTCS” throughout this policy shall mean all sixteen colleges, the System Office, KBEMS, the Kentucky Fire Commission, and any affiliated organizations directly controlled through KCTCS.

### *Basis*

KCTCS policy and procedure as well as state and federal law prohibit unlawful discrimination based on sex/gender in employment and educational programs or activities.

## DEFINITIONS

Complainant is a person who alleges that he or she is the subject of sexual misconduct, or of retaliation related to the complaint, investigation thereof, or any circumstance surrounding the complaint. For purposes of this procedure, the Complainant can be a KCTCS employee, student, volunteer, guest, or visitor.

Respondent is a person whose alleged conduct is the subject of a complaint. For purposes of this procedure, the Respondent can be a KCTCS employee, student, volunteer, guest, or visitor.

Sexual Misconduct Offenses include, but are not limited to:

1. Sexual Harassment
2. Non-consensual Sexual Contact or attempts to commit same
3. Non-consensual Sexual Intercourse or attempts to commit same
4. Sexual Exploitation

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<sup>1</sup> KCTCS credits the National Center for Higher Education Risk Management and the Association of Title IX Administrators for their model policy, which provides the basis for this procedure. KCTCS also credits Arapahoe Community College’s Sexual Misconduct Procedure and Occidental College’s Sexual Misconduct Policy as resources.

1. Sexual Harassment is behavior characterized by a reasonable person as

- Unwelcome, gender-based verbal or physical conduct that is--
  - Sufficiently severe, pervasive, or persistent that it--
  - Unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from KCTCS' educational program and/or activities and is--
  - Based on power differentials, creation of a hostile environment, or retaliation.

Examples include but are not limited to: attempting to coerce an unwilling person into a sexual relationship; repeatedly subjecting a person to egregious, unwelcome sexual attention; punishing a refusal to comply with a sexually based request; conditioning a benefit on submitting to sexual advances; sexual violence; intimate partner violence; stalking; gender-based bullying.

2. Non-consensual Sexual Contact is:

- Any intentional sexual touching--
- However slight--
- With any object (including body parts such as hand or genitals)--
- By any individual upon any individual--
- That is without consent and/or by force.

3. Non-consensual Sexual Intercourse is:

- Any sexual penetration--
- However slight--
- With any object (including body parts such as hand or genitals)--
- By any individual upon any individual--
- That is without consent and/or by force.

Consent to sexual activity is a factual determination that varies by circumstance. However, in all cases, consent must be clear, knowing, and voluntary. Consent is active, not passive. Consent can be given by words or actions. The words or actions must be sufficient to create mutually understandable clear permission regarding willingness to engage in, and the conditions of, sexual activity. Silence, in and of itself, is not consent, cannot be interpreted as consent, and, standing alone, cannot be relied upon as a defense. Consent to one form of sexual activity does not imply consent to any other forms of sexual activity. Any person may

withdraw consent at any point involved in sexual contact. Previous relationships or prior consent does not imply consent to future sexual acts.

Pursuant to KRS 510.020, a person is legally deemed incapable of consent when he or she is any of the following:

- Less than sixteen years old
- An individual with an intellectual disability or an individual that suffers from a mental illness
- Mentally incapacitated
- Physically helpless

An individual engaging in sexual activity with another individual who is reasonably known to be mentally incapacitated or physically helpless constitutes a violation of this procedure. Mental incapacity or physical helplessness may be due to any of a variety of factors including but not limited to use of alcohol, drugs, sleep, involuntary physical restraint, unconsciousness, or other inability to make rational, reasonable decisions)

In general, sexual contact while under the influence of drugs or alcohol creates risk for all parties. Alcohol and drugs impair an individual's ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Force is the use of physical violence and/or a physical imposition on someone to gain sexual contact, access, or other sexual gratification. Force also includes threats, intimidation (implied threats) and coercion that overcome another person's resistance or produce consent that would not have been granted but for the force.

Coercion is the exertion of unreasonable pressure to obtain sexual conduct, activity, or gratification. Once an individual makes it clear that he/she does not want to have sex, wants to stop, or does not want to go past a certain point of sexual activity, continued pressure intended to obtain sex, the continuation of sex, or the movement beyond a certain point of sexual behavior may be coercive.

Sexual exploitation occurs when anyone takes non-consensual or abusive sexual advantage of another for his or her own gain, advantage, or benefit or for the gain, advantage, or benefit of anyone other than the individual who is being exploited, and that behavior does not otherwise constitute an otherwise-defined sexual misconduct offense.

Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy
- Prostituting another person
- Non-consensual video or audio recording of sexual activity
- Going beyond the boundaries of consent (such as permitting a hidden audience when engaging in consensual sex)
- Voyeurism
- Knowingly transmitting a sexually transmitted infection, virus or disease to another person
- Exposing one's genitals or inducing another to expose his/her genitals in non-consensual circumstances
- Sexually based stalking and/or bullying
- Viewing or possessing child or adult pornography at work or on college-owned property and/or equipment

Stalking means engaging in an intentional course of conduct, which would cause a reasonable person in similar circumstances to suffer substantial mental distress:

1. Directed at a specific person or persons;
2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
3. Which serves no legitimate purpose.

(See [KRS 508.130-508.155](#))

Examples include, but are not limited to:

1. Following a person;
2. Appearing at their home, place of business, or classrooms;
3. Making harassing phone calls;
4. Making/sending written messages, or sending electronic messages;
5. Leaving messages or objects at their home, place of business, vehicle, or classroom; and
6. Vandalizing personal property.

Domestic Violence and Dating/Intimate Partner Violence means physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple. Family members include a spouse, former spouse, a grandparent, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim.

(See [KRS 403.715-403.785](#))

Dating/intimate partner violence means violence committed by a person –

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - i. The length of the relationship.
  - ii. The type of relationship.
  - iii. The frequency of interaction between the persons involved in the relationship.

KCTCS will not tolerate intimate partner violence in any form. KCTCS will evaluate and process allegations of sexual misconduct arising from instances of domestic violence or dating/intimate partner violence under the terms of this procedure.

#### **CONFIDENTIALITY, PRIVACY AND REPORTING**

KCTCS is committed to protecting the privacy of all individuals involved in a report of any violation of the Sexual Misconduct Policy and Procedure. Individuals involved in the response, including Title IX coordinators, investigators, and hearing panel members, shall receive instruction about safeguarding private information. Throughout the process KCTCS will make every effort to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report. When the need for privacy and confidentiality conflict with obligations imposed by state and federal laws (Clery and Minger reporting, open records, FERPA and duty to warn/duty to report) those laws shall control.

All KCTCS proceedings are conducted in compliance with FERPA, Title IX, Title VII, the Clery Act, and state and federal law. No information shall be released from such proceedings except as required or permitted by law and KCTCS policy and procedure.

Privacy and confidentiality have distinct meanings under this policy.

Privacy generally means that information related to a report of a violation of this policy will only be shared among KCTCS employees who “need to know” in order to assist in review, investigation, or resolution of the report of violation. These employees are not bound by confidentiality, but will be discreet and respectful of the privacy all individuals involved.

Confidentiality means that information shared by an individual with designated professionals cannot be revealed to any other individual without the express permission of the individual. Employees of KCTCS do not have this legally protected confidentiality, so **any report of a policy violation to a KCTCS employee requires that employee to take appropriate action.**

Certain mental health providers, ordained clergy, rape crisis counselors and attorneys have legally protected confidentiality. KCTCS does not provide these services, but the Title IX Coordinator at each college maintains a list of local services for referral. Please note that when a report involves suspected abuse of a minor under the age of 18, state law requires both KCTCS as well as entities who are entitled to maintain confidentiality to notify child protective services and/or local law enforcement.

The following websites list resources available to victims of sexual assault and domestic violence in Kentucky and nationally:

Kentucky Association of Sexual Assault Programs

[http://www.kasap.org/get\\_help.html](http://www.kasap.org/get_help.html)

Kentucky Domestic Violence Association

<http://www.kdva.org/>

Clergy Center referrals by state

<http://clerycenter.org/referrals-sexual-assault-and-rape-state>

AARDVARC

<http://www.aardvarc.org/rape/states/kyrp.shtml>

Womenshealth.gov

<http://womenshealth.gov/violence-against-women/get-help-for-violence/resources-by-state-violence-against-women.html>

KCTCS employees may access confidential assistance through the [Employee Assistance Program](#).

College Title IX Coordinators will maintain a list that includes local resources for each college community.

KCTCS Title IX Obligations

Under Title IX, KCTCS is required to take immediate and corrective action if a “responsible employee” knew, or in the exercise of reasonable care, should have known about sexual or gender-based harassment that creates a hostile environment. A “responsible employee” includes any employee who:

- Has the authority to take action to redress the harassment;
- Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
- A student could reasonably believe has the authority or responsibility to take action.

Under this analysis, employees with supervisory and leadership responsibilities are considered “responsible employees”, including division chairs, deans, provosts, administrators, faculty, and other employees in managerial positions. KCTCS requires that all responsible employees share a report of sexual misconduct with the Title IX Coordinator or security personnel for the school, KCTCS Legal Services, or KCTCS Human Resources.

If a Complainant has any concerns about a KCTCS representative’s ability to maintain confidentiality or privacy, the Complainant is encouraged to ask before speaking to that representative.

#### *Request for Confidentiality*

When a Complainant requests that his/her identifiable information not be shared with the Respondent or that no formal action be taken, KCTCS will balance this request with its obligations to provide a safe and non-discriminatory environment for its members and its responsibility to provide proper due process rights to the Respondent. KCTCS may consider the nature and seriousness of the conduct, the ages and roles of the Complainant and Respondent, whether or not other reports or complaints against the Respondent have been received, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

KCTCS will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or a request to not pursue an investigation. If KCTCS is unable to take action due to the Complainant’s request, or must take action despite the request, the Title IX Coordinator will inform the Complainant of KCTCS’ chosen course of action.

#### *Reporting*

***KCTCS encourages any individual who has suffered an incident of sexual violence to seek immediate assistance from a medical provider and/or law enforcement. This is the best way to ensure that evidence is preserved and that a timely investigation and response are initiated.***

***An individual who is considering making a criminal complaint or taking other legal action should seek medical care as soon as possible after the assault. It is important for the individual to not bathe, douche, or change clothing prior to the medical examination in order to avoid inadvertently removing important evidence. The kind of evidence that supports a legal case against an accused should be collected within 72 hours of an assault.***

## Reporting Options

- A. Sexual assault, stalking and relationship violence may be reported to any office responsible for Student Affairs, Campus Safety/Security, Academic Affairs, or any other official or staff member that is designated a Campus Security Authority. If a faculty or staff member is not designated a Campus Security Authority, and receives a complaint about sexual assault/dating violence/domestic violence/stalking, that faculty and/or staff member is obligated to assist that student in contacting the Campus Title IX Coordinator or a Campus Security Authority, or to notify those persons of the report of sexual misconduct.
- B. KCTCS strongly encourages the reporting of all incidents of sexual assault, stalking, and relationship violence to the appropriate KCTCS officials. Making a report means telling someone in authority what happened. This can be in person, in writing (including email), or by telephone. At the time of the report, the Complainant does not have to decide on or request a course of action. Choosing to report and then deciding what to do after making the report may be a process that takes time. The Campus Title IX Coordinator and Clery Compliance Officer at each college are trained to assist individuals through the process. In this process the College will balanced the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the KCTCS community.
- C. All KCTCS personnel who receive a report or complaint of sexual assault, stalking, and/or relationship violence should immediately refer the complainant to the Title IX Coordinator where the complainant will be counseled on his or her options.
- D. Once a KCTCS College receives a report, that College is required to contact the KCTCS Crisis Management Coordinator and Legal Services. KCTCS Legal Services will provide guidance and coordination to the College through the assessment, investigation and disciplinary proceedings as applicable. Legal Services staff will act as primary investigators and may conduct the investigation personally or seek assistance from College personnel in investigating reports of violation of the Sexual Misconduct Procedure.

### *Timely Warning*

Should the reported misconduct represent an ongoing threat to the safety of members of the campus community, the college may be required to issue a crime bulletin. At no time will KCTCS release the name of the Complainant to the general public without the express consent of the Complainant.

The Safety Department at each KCTCS College is responsible for issuing Crime Bulletins. When a crime is reported to or brought to the attention of a College's Safety Department and when the crime is one that represents an ongoing threat to the safety of members of the campus community, the Safety Department must determine whether a Crime Bulletin should be issued. The procedure for making that determination requires the College Safety Department to contact the KCTCS System Office Crisis Management Coordinator and KCTCS Legal Services.

These parties will review all related information and determine whether a Crime Bulletin shall be distributed to the affected campus community. Crime Bulletins will be distributed as soon as possible after the incident is reported; however, the release is subject to the availability of accurate facts concerning the incident. Crime Bulletins may be distributed using a variety of methods, the most common being mass email distribution. Depending on the nature of the crime a Crime Bulletin banner may be added to the front page of the KCTCS College webpage, and/or printed and distributed to any number of areas on campus. These may include the library, bookstore, student centers, and any additional areas that may assist in alerting the campus community.

### *Reporting Considerations*

Anonymous reports will be taken seriously and reviewed thoroughly by KCTCS, but the ability to respond to such a report may be limited depending on the information provided. Anonymous reports can be made through the KCTCS ethics hotline using the website, <https://secure.ethicspoint.com/domain/media/en/gui/28458/index.html>, or by calling 1-866-594-3115. If there is immediate danger, call 911 or local emergency services, this option is for solely for anonymous on-campus reporting of non-emergency situations.

Off-campus conduct that is likely to have a substantial impact on the Complainant's on-campus activities or that poses a threat or danger to the campus community may also be addressed under this policy.

If the Respondent is not a member of the KCTCS community, KCTCS will seek to meet Title IX obligations by taking immediate steps to end the harassment, prevent its recurrence, and address its effects, but the ability to take disciplinary action against the Respondent may be limited.

### *Retaliation*

Retaliation of any sort is against the law; therefore, KCTCS will not tolerate retaliation related to a sexual misconduct complaint. Retaliation may include unlawful adverse employment action (such as a demotion, change in working hours/schedule or working conditions, etc.), unlawful adverse action in the academic setting, offensive behavior on and off the job/KCTCS premises, and third-party retaliation (e.g., against victim's close associate or relative if also employed at or attending a KCTCS institution). Use of social media to harass or retaliate against individuals involved in a sexual misconduct complaint shall be subject to disciplinary action.

No unlawful adverse employment action or other retaliation shall be taken against any individual who resists or rejects sexual misconduct, who makes a good faith report or allegation of sexual misconduct, or who participates in a sexual misconduct investigation or proceeding. An individual who believes he/she has been retaliated against shall report it using the same procedures as allegations of harassment, discrimination or sexual misconduct. KCTCS shall investigate any allegations of retaliation and take appropriate action if retaliation did occur.

### *False Reports*

KCTCS will not tolerate intentional false reporting of incidents. KCTCS takes all allegations of sexual misconduct seriously. A good-faith complaint that results in no finding of a violation is NOT considered a false report. However, if any party is found to have made false allegations or given false or untruthful information with malicious intent or in bad faith, that party may be subject to disciplinary action under KCTCS policies and procedures and/or the Student Code of Conduct. False reports may also constitute violations of state criminal statutes and civil defamation laws.

## **INTERIM REMEDIES AND SANCTIONS**

### *Interim Remedies*

Upon receipt of a report of a violation of this procedure, KCTCS reserves the right to enact the interim remedies it deems necessary to protect the rights, well-being, and personal safety of KCTCS employees, students, guests or visitors. Interim remedies may be imposed regardless of whether formal disciplinary action is sought or pursued against the Respondent. Such measures may include, but are not limited to:

- referral to counseling services and other resources
- rescheduling of exams or assignments (in conjunction with appropriate faculty)
- no-contact letter
- limited access to college facilities or organizations pending resolution of the report
- provision of an escort on campus property
- temporary work reassignment
- temporary class schedule reassignment
- administrative leave during the investigation and resolution
- immediate temporary suspension from the college during the investigation and hearing process
- interim volunteer duty reassignment
- suspension of volunteer duty during the investigation; report of the matter to local law enforcement in the jurisdiction in which the college is located
- ban from college location(s)
- report of the matter to local law enforcement in the jurisdiction in which the college is located
- KCTCS further reserves the right to apply any other remedy that can be tailored to the involved individuals to achieve the goals of this policy

### *Assessment, Investigation and Resolution*

Upon receipt of a report of violation of the Sexual Misconduct Procedure, the college Title IX Coordinator must immediately notify the System Office Title IX Committee. The SO Title IX Committee will assist in the review, investigation and resolution of reports. Following the initial assessment, the Committee will recommend further action for resolution of the report. (See Appendix A for the complete assessment and investigation process.)

The initial steps for resolution of a complaint are the same whether the Respondent is a student, employee, or guest. Employee and guest Respondents will be processed in accordance with [KCTCS employment policies and procedures](#). Student Respondents will be processed in accordance with the [KCTCS Student Code of Conduct](#) and [student policies](#) and the Hearing Procedures for Student Respondents (see Appendix B).

### *Sanctions*

Not all forms of sexual misconduct will be deemed to be equally serious offenses. KCTCS reserves the right to impose different sanctions depending on the severity of the offense. KCTCS will consider the rights of both the Complainant and the Respondent when contemplating sanctions.

Employees or volunteers found in violation of the Sexual Misconduct Procedure are subject to appropriate disciplinary action, up to and including termination of employment or volunteer assignment or other actions in accordance with [KCTCS policies and procedures](#).

Students found in violation of Sexual Misconduct Procedure are subject to appropriate disciplinary action, up to and including expulsion in accordance with the [KCTCS Student Code of Conduct](#) and [student policies](#).

Employees or volunteers who are found to have actual knowledge of violation of the Sexual Misconduct Procedure and fail to report that knowledge are subject to appropriate disciplinary action, up to and including termination of employment or voluntary assignment or other actions in accordance with [KCTCS policies and procedures](#).

Guests or visitors found in violation of the Sexual Misconduct Procedure will be issued a no-trespass order banning him/her from KCTCS property.

Individuals who are found in violation and are subject to disciplinary action have the right to appeal the action pursuant to [KCTCS policies and procedures](#) and/or the [KCTCS Student Code of Conduct](#).

### **REVISIONS**

This procedure is written to be in compliance with federal and state law as interpreted by the courts. If this policy in any way becomes in conflict with new or existing statutes, regulations,

or judicial opinions, KCTCS' procedure can be deemed amended as of the time of the decision, ruling, or legislative action to assure continued compliance.

KCTCS reserves the right to change any provision of this procedure at any time and the change shall become effective immediately.

#### **NOTICE OF NONDISCRIMINATION**

The Kentucky Community and Technical College System is an equal educational and employment opportunity institution and does not discriminate on the basis of; race, religion, color, sex, national origin, age, disability, family medical history, or genetic information. Further, we vigilantly prevent discrimination based on sexual orientation, parental status, marital status, political affiliation, military service, or any other non-merit based factor.

#### **EXTERNAL ASSISTANCE**

External remedies are available for students through the United States Department of Education Office for Civil Rights. For more information, you may contact the Philadelphia Office:

U.S. Department of Education Office for Civil Rights  
Wanamaker Building, Suite 515  
100 Penn Square East  
Philadelphia, PA 19107  
Telephone: 215-656-8541  
FAX: 215-656-8605;  
TDD: 215-656-8604  
Email: [OCR\\_Philadelphia@ed.gov](mailto:OCR_Philadelphia@ed.gov)