

POLICY PROHIBITING SEX-BASED MISCONDUCT

I. Purpose

The College is committed to maintaining a safe and healthy educational and employment environment that is free from discrimination, harassment and misconduct on the basis of sex, which includes sexual orientation or gender-related identity. The purpose of these Procedures is to implement the College's Policy Prohibiting Sex-Based Misconduct and Board Policy 2.13.14 Harassment/Discrimination, Board Policy Board Policy 2.13.14.01 Sexual Harassment Policy, and Board Policy 3.18 Student Harassment/Discrimination, ensure a safe and healthy educational and employment environment, and meet legal requirements in accordance with: Title IX of the *Education Amendments of 1972* ("Title IX"), which prohibits discrimination on the basis of sex in the College's education programs or activities; relevant sections of the *Violence Against Women*

a particular legal framework require the College not to address an act of misconduct falling within the scope of these Procedures.

Sections I-VII and IX-

- With respect to Title IX complaints that relate to a College employee as the complainant or as the respondent, the Title IX Coordinators will partner with the Department of Human Resources to manage the investigation into the allegations and recommend any appropriate sanctions against an employee.
- The Title IX Coordinator must not be the decision-maker for a determination of responsibility in response to a formal Title IX complaint of sexual harassment.

Coordinating any appropriate supportive measures and ensuring the effective implementation of any remedies.

Ensuring that appropriate policies and procedures are in place for working with law enforcement and coordinating services with local victim advocacy organizations and services providers, including rape crisis centers.

Ensuring that adequate training is provided to students, faculty and staff on Title IX issues. Providing in-service training to the college community, including students, faculty and staff, on Title IX policies and procedures.

Monitoring students' participation in athletics and across academic fields to ensure that sex discrimination is not causing any disproportionate enrollment based on sex or otherwise negatively affecting a student's access to equal educational opportunities.

Developing a method to survey the school climate and coordinating the collection and analysis of information from that survey.

Promoting an educational and employment environment which is free of sex discrimination and gender bias.

Inquiries concerning the application of Title IX may be referred to the Title IX Coordinators or to the Assistant Secretary for Civil Rights at the United States Department of Education:

Office for Civil Rights, Chicago Office

and fall outside the scope of Title IX, the Department of Human Resources will manage the investigation into the allegations and issue a decision and any appropriate sanction(s).

For complaints of sex-based misconduct that involve a College employee as the respondent, investigatory and disciplinary procedures required by any applicable collective bargaining agreement will apply in addition to these Procedures.

V. Options for Assistance Following an Incident of Sex-Based Discrimination, Harassment or Misconduct

A. On- and Off-Campus Counselors and Advocates

The following on- and off-campus counselors and advocates can provide an immediate confidential* response in a crisis situation, as well as ongoing assistance and support:

Talkspace

<https://www.talkspace.com/kish>

Safe Passage

815-756-5228

<https://www.safepassagedv.org/>

HOPE of Ogle County Domestic Violence Services

815-562-8890

<https://hopedv.org/>

Sexual Assault and Abuse

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Director Campus Safety & Security
Kishwaukee College
815-825-9465
Office: C2126

C. On- and Off-Campus Health Care Options

Title IX Coordinators

College Administrators College administrators (Vice Presidents, Deans, Assistant Deans, and Directors)

Supervisors and Managerial Staff

All faculty members

Campus Police DeKalb County Sheriff's Officers

Director Student Success

Student Involvement Office

Full-time staff members

Coaches of college athletic teams

Advisors of the following student clubs/organizations officially recognized by the

College: Student Government Association, Phi Theta Kappa, National Society of

Leadership and Success, Alpha Delta Nu, Black Student Union, Business Club,

Criminal Justice Club, Educators Rising, 0 G(t)-4(i)5(ce)13()-1015B3.0.00s-4(i)5(ET@.reWie

The individuals in this list are Confidential Advisors, as defined in Appendix A. Professional, licensed counselors who provide mental health counseling to students (including counselors who act in that role under the supervision of a licensed counselor) are not required to report any information about an alleged incident to the Title IX Coordinator without a student's permission.

Note: While the individuals listed above may maintain a student's confidentiality vis-à-vis the College, they may have reporting or other obligations under State law. Any College employee who suspects or receives knowledge that a minor student may be an abused or neglected child or, for a student aged 18 through 21, an abused or neglected individual with a disability, is required to: 1) immediately report or cause a report to be made to the Illinois Department of Children and Family Services (DCFS) on its Child Abuse Hotline; and 2) follow directions given by DCFS concerning filing a written report within 48 hours with the nearest DCFS field office.

Also Note: If the College determines that a person alleged to be the perpetrator of sexual misconduct poses a serious and immediate threat to the College community, College Police may be called upon to issue a timely warning to the College community. Any such warning will not include any information that identifies the person alleged to be the victim.

4. Electronic and/or Anonymous Reporting

The College maintains an online system for electronic reporting. The reporter may choose to provide his/her identity or may choose to report anonymously. The system will notify the user, before he/she enters information, that entering personally identifying information may serve as notice to the College for the purpose of triggering an investigation. Anonymous reports can be filed at <https://www.kish.edu/student-life-student-success/filing-report>. Where a reporter chooses to provide his/her identity and contact information, the College will respond to the reporter within 12 hours.

5. Note Regarding Student Participation in Public Awareness Events

Public awareness events such as "Take Back the Night," the Clothesline Project, candlelight vigils, protests, "survivor speak outs" or other forums in which students disclose incidents are not considered notice to the College of sex-based discrimination, harassment or misconduct for purposes of triggering an obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the College will provide information about students' rights at these events.

B. Employee Reporting

1. Alleged Sex-Based Misconduct of a Student

In addition to the reporting requirements for Responsible Employees (see Section VI.A), all College employees who have information regarding sex-based misconduct of a student should report it to the Title IX Coordinator or any Responsible Employee.

2. Alleged Sex-Based Misconduct of an Employee

An employee should notify a Title IX Coordinator or the Department of Human Resources if he or she believes that the College or a member of the College community has engaged in sex

discrimination, sexual harassment or other sex-based misconduct in violation of the College's Policy Prohibiting Sex-Based Misconduct or Board Policy 2.13.14 Harassment/Discrimination and Board Policy 2.13.14.01 Sexual Harassment Policy and Board Policy 3.18 Student Harassment/Discrimination.

3. Knowingly False Reporting

A person who knowingly makes a false report of sex-based misconduct may be subject to a disciplinary action, up to and including termination. A determination regarding responsibility, alone, is not sufficient to conclude that a person made a false report.

C. Board Member Reporting

Members of the College's Board of Trustees and other elected officials should promptly report claims of sex-based misconduct against a Board member. Board members and elected officials should report claims of sex-based misconduct against a Board member to the Board Chair or College President. If the report is made to the College President, then the President shall promptly notify the Board Chair, or if the Board Chair is the subject of the complaint, then the Board Vice Chair. When a complaint of sex-based misconduct is made against a member of the Board of Trustees, then the Board Chair shall consult with legal counsel for the College to arrange for an independent review of the allegations. If the allegations concern the Board Chair, or if the Board Chair is

community about crimes that have already occurred but may continue to pose a serious or ongoing threat to students and employees. The *Clery Act* also requires the College to maintain a public crime log and publish an Annual Security Report (“ASR”) available to all current students and employees. The ASR documents three calendar years of select campus crime statistics (including statistics regarding incidents of dating violence, domestic violence, and stalking), security policies and procedures, and information on the basic rights guaranteed to victims of sexual assault.

VIII. Grievance Process for Complaints Alleging Title IX Sexual Harassment and/or Alleging Sexual Violence, Domestic Violence, Dating Violence or Stalking

For purposes of this Grievance Process, a formal complaint is a document filed by a complainant or signed by the Title IX Coordinator, alleging (a) sexual harassment in violation of Title IX and/or (b) sexual violence, domestic violence, dating violence or stalking in violation of the *Preventing Sexual Violence in Higher Education Act*, and requesting that the College investigate the allegation. At the time of filing a formal complaint pursuant to this Grievance Process, the

6. The College Code of Conduct provision(s) that prohibit knowingly making false statements or knowingly submitting false information during the grievance process.

If, during the course of an investigation, the College decides to investigate allegations that are not included in the initial written notice of allegations, the Title IX Coordinator will provide subsequent written notice of the additional allegations to all known parties.

B. Informal Resolution

At any time after receiving the initial notice of allegations (See Section VIII.A above), and prior to a determination regarding responsibility being reached, the complainant and respondent may request to participate in an informal resolution process. Informal resolution will only occur with both parties' voluntary, written consent. At any time prior to agreeing to a resolution, any party will have the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

The College does not permit informal resolution in cases involving alleged sexual harassment, sexual violence, domestic violence, dating violence or stalking by a College employee toward a student.

C. Consolidation of Formal Complaints

The Title IX Coordinator may consolidate formal complaints as to allegations 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 misconduct arise out of the same facts or circumstances.

D. Dismissal of Formal Complaints

If, during the course of an investigation or following an investigation into a formal complaint, the Title IX Coordinator or designated Investigator determines that the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 34 C.F.R. § 106.30 (Title IX) even if proved, did not occur in the District's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator will dismiss the formal complaint with regard to that conduct for purposes of Title IX. In cases where the College determines that Title IX is not applicable but the College still intends to apply this Grievance Process to resolve the alleged misconduct, the College will inform the parties that Title IX is inapplicable but that such Process will nevertheless be applied. In addition, dismissal of a formal complaint for purposes of Title IX does not preclude action under other College policies and procedures.

The Title IX Coordinator may dismiss a formal complaint, or any allegations therein, at any time during an investigation if: (1) the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; (2) the respondent is no longer enrolled or employed by the College; or (3) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal—either of a complaint altogether, or of a complaint for purposes of Title IX—the Title IX Coordinator or Investigator will promptly send written notice of the dismissal and reason(s) for the dismissal simultaneously to the parties. Dismissal of a formal complaint under this Process does not preclude action under other College policies and procedures.

E. Investigation of Formal Complaint

The Title IX Coordinator will appoint one or more trained investigators to undertake an investigation into a formal complaint. Throughout the investigation, the parties will be afforded an equal opportunity to present witnesses including fact and expert witnesses, and other inculpatory and exculpatory evidence. The Investigator will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. Any proceeding, meeting, or hearing held to resolve formal complaints pursuant to this Grievance Process will protect the privacy of the participating parties and witnesses.

Both parties will be afforded an opportunity to be accompanied to any meeting or proceeding by

3. The Title IX Coordinator, Investigator or Hearing Officer 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; and/or
4. The sanction is disproportionate with the violation.

A party who wishes to appeal a determination regarding responsibility or a dismissal of a formal complaint or allegations therein must submit a written appeal request to the Title IX Coordinator within seven (7) business days of the party's receipt of the written determination or written dismissal notice. The written appeal request must identify the ground(s) on which the party seeks to appeal the determination or dismissal.

Within seven (7) business days of the Title IX Coordinator's receipt of an appeal request, the Title IX Coordinator will forward the appeal request to the Executive Director Campus Relations & Kishwaukee College Foundation or Director Student Success or designee and will notify the other party in writing that an appeal has been filed. Before reaching a determination regarding the appeal, the Executive Director Campus Relations & Kishwaukee College Foundation or Director Student Success will afford both parties an equal opportunity to submit a statement in support of, or challenging, the determination or responsibility or dismissal that is the subject of the appeal. Within seven (7) business days after the or designee

procedures, confidentiality requirements, relevant College policies and procedures, retaliation, survivor-centered and trauma-informed response, relevant definitions, and other pertinent topics.

In addition to the above training, individuals who investigate or resolve complaints, including through informal resolutions, receive at least 8-10 hours of annual training on issues related to *Preventing Sexual Violence in Higher Education Act* offenses including sexual violence, domestic violence, dating violence, and stalking; the scope of the College's education program or activity; the Title IX and College definitions of sexual harassment; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and how to conduct the College's Grievance Process outlined in Section VIII, above. Decision-makers in particular receive training on any technology to be used at live hearings 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 in particular receive training on issues of relevance so as to enable them to create an investigative report that fairly summarizes relevant evidence.

All Confidential Advisors receive 40 hours of training on sexual violence before being designated a Confidential Advisor. Annually thereafter, Confidential Advisors attend a minimum of six (6) hours of ongoing educational training on issues related to sexual violence. Confidential Advisors also receive periodic training on the College administrative process, interim protective measures and accommodations, and the College's Grievance Process pursuant to Section VIII above.

The College, in conjunction with its Title IX Compliance Committee established pursuant to the *Campus Security Enhancement Act of 2008* (110 ILCS 12/10), will annually review its training offerings to identify ways in which to enhance its effectiveness.

Any 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.

APPENDIX A

-Based Misconduct Procedures

- A. **Bystander Intervention:** see Section 5 of the *Preventing Sexual Violence in Higher Education Act*, [110 ILCS 155/5](#).
- B. **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sex-based misconduct.
- C. **Confidential Advisor:** a person who is employed or contracted by the College to provide emergency and ongoing support to student survivors of sexual violence. Confidential Advisors may include persons employed by a community-based sexual assault crisis center with whom the College partners. Individuals designated as “Responsible Employees” in Section VI of these Procedures are not Confidential Advisors.
- D. **Consent:** knowing and voluntary agreement to engage in sexual activity. Coercion, force, or the threat of either invalidates consent. Consent may not be inferred from silence, passivity, or a lack of verbal or physical resistance. A person’s manner of dress does not constitute consent. Past consent to sexual activities does not imply ongoing or future consent. Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person. Consent may be withdrawn at any time. A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation

reasonable person in the same circumstances from opposing practices prohibited by the College's Sex-Based Misconduct Policy and these Procedures. Retaliation may result in disciplinary or other action independent of the sanctions or supportive measures imposed in response to the allegations of sexual discrimination, harassment or misconduct.

- P. Sexual Assault:** any type of sexual contact or behavior that occurs by force or coercion, without consent of the recipient of the unwanted sexual activity, or in a familial relationship of a degree that would prohibit marriage. It includes sexual acts against a person who is unable to consent either due to age or lack of capacity or impairment. Examples include forcible sexual intercourse, forcible sodomy, forcible fondling, child molestation, incest, attempted rape, statutory rape and rape. Sexual assault can occur between members of the same or opposite sex. Sexual assault includes any forced act against one's will where sex is the weapon.
- Q. Sex-Based Misconduct:** Misconduct on the basis of sex, sexual orientation or gender-related identity. Such misconduct includes sex discrimination, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, sexual violence and stalking.
- R. Sexual Exploitation:** when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not meet the definition of sexual assault. Sexual exploitation includes prostituting another person, non-consensual visual or audio recording of sexual activity, non-consensual distribution of photos or other images of an individual's sexual activity or intimate body parts with an intent to embarrass such individual, non-consensual voyeurism, knowingly transmitting HIV or a sexually transmitted disease to another, or exposing one's genitals to another in non-consensual circumstances.
- S. Sexual Harassment:** Unwelcome sexual advances, requests for sexual acts or favors, and other verbal, non-verbal or physical conduct of a sexual nature when:

Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, academic advancement, evaluation, or grades;

Submission to or rejection of such conduct by an individual is used as a basis for employment, academic advancement, evaluation, or grading decisions affecting that individual;

