

Sex/Gender-Based Harassment, Discrimination and Sexual Misconduct Policy (Title IX)

The policy of Kellogg Community College is zero tolerance to all forms of discrimination, harassment, violence, and other forms of abusive behavior, physical or verbal, by any persons on its property, in its facilities, or elsewhere when conducting its business and at KCC-sponsored activities.

No person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activities receiving Federal financial assistance.

Title IX of the Education Amendment of 1972, and its implementation regulation at 34 C.F.R. Part 108 (Title IX)

Members of the college community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are to conduct themselves in a manner that does not infringe upon the rights of others.

Zero tolerance means that when an allegation of misconduct is brought to the attention of any KCC faculty, staff, or Title IX team member, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. The college uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred.

The college’s sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern even when those topics may be challenging or provocative.

Title IX Team

The college's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. Direct questions about this policy to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to a member of the college Title IX team.

Title IX Coordinator: Ali Robertson
Human Resources Office
Whitmore Administration Building
Phone: 269-965-4152
Email: robertsona@kellogg.edu

Title IX Deputy Coordinator: Gwyn James
Student & Community Services Division
Roll Building
Phone: 269-565-7899
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Title IX Deputy: Vicki Rivera
Human Resources Office
Whitmore Administration Building
Phone: 269-565-7931
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Title IX Investigator: Austin Simons
KCC Public Safety
Lane-Thomas Building
Phone: 269-565-7895
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Title IX Investigator: Marc Pierce
KCC Public Safety
Lane-Thomas Building
Phone: 269-565-2113
Email: piercem2@kellogg.edu

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Michigan Department of Civil Rights
110 W. Michigan Avenue, Ste. 800
Lansing MI 48933
Phone: 313-456-3700
Toll-Free: 800-482-3604
Fax: 313-456-3701
TTY: 877-878-8464
Email: MDCRServiceCenter@michigan.gov
Web: <http://www.michigan.gov/mdcr>

U.S. Department of Justice Civil Rights Division

950 Pennsylvania Avenue, N.W.
Educational Opportunities Section, PHB
Washington, D.C. 20530
Phone: 202-514-4092
Toll-Free: 877-292-3804
Fax: 202-514-8337
Email: education@usdoj.gov
Web: <https://www.justice.gov>

Incidents involving alleged misconduct by the Title IX Coordinator are made directly to the Vice President for Student and Community Services.

Overview of Policy Expectations with Respect to Physical Sexual Misconduct

Consent is sexual permission. The expectations of our community regarding consent can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing (or affirmative, conscious) and voluntary consent prior to and during sexual activity. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you do not. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

- Consent is clear, knowing, voluntary, affirmative and conscious words or actions that give permission for specific sexual activity.
- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.

- Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
- The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
- Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).

This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity. Offenses may also be assessed under college policies related to violence.

This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <https://www.womenshealth.gov/a-z-topics/date-rape-drugs> .

Additionally, there is a difference between seduction and coercion. An unwelcome advance that results in a welcome encounter is seduction. An unwelcome advance that results in an unwelcome encounter is coercive. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

- Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes intentional threats, intimidation (implied threats) and coercion that overcomes an individual’s free will or resistance or that produces consent but does not result in valid consent.
- Coercion is an unreasonable amount of pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
 - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be

considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing.

- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.

Overview of Policy Expectations with Respect to Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions of power or authority (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. Each of the parties, particularly in retrospect, also may view the relationship in different ways. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of college policy.

Sexual Misconduct Offenses Includes, But Are Not Limited To:

Sexual Harassment: Unwelcome sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct. May take the form of quid pro quo harassment, retaliatory harassment and/or create a hostile environment.

A hostile environment is created when sexual harassment is sufficiently severe, persistent, or pervasive and objectively offensive that it unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the college's educational and/or employment or social program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment
- When submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
 - This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Non-Consensual Sexual Contact

Any intentional sexual touching, however slight, with any object by a person upon another person that is without consent and/or by force, or attempts to commit same.

Examples include, but are not limited to:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

Non-Consensual Sexual Intercourse

Any sexual intercourse, however slight, with any object by a person upon another person that is without consent and/or by force, or attempts to commit same.

Examples include, but are not limited to:

- Vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

Sexual Exploitation

Occurs when one person takes 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.

- Examples include, but are limited to:
- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

Other Misconduct Offenses (will fall under Title IX when sex or gender-based)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;

3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as repeated and/or severe aggressive behavior which is likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally, that is not speech or conduct otherwise protected by the 1st Amendment.
6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other.
7. Stalking, defined as a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class, that is unwelcome and would cause a reasonable person to feel fear. Stalking also refers to repetitive and menacing pursuit/following which is harassing and/or interfering with the peace and/or safety of another.

Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

Retaliation

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity [subject to limitations imposed by the 1st Amendment and/or Academic Freedom. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of college policy.

Sanctioning for Sexual Misconduct

Sanctions and disciplinary action may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy.

Sanctions for violation of the Student Code of Conduct, which includes this policy, are found in the KCC Student Handbook.

Sanctions for employee violation of this policy are found in the KCC Policy Manual.

Formal Reporting Options

All college employees have a duty to report, unless they fall under the "Confidential Reporting" section (see below). Employees must share all details of the reports they receive with the Title IX Coordinator and/or Deputy Coordinators. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported. Employees are

responsible to maintain confidentiality and not share the information with persons other than the Title IX team.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predatory behavior, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to staff working in Title IX, student conduct, KCC Public Safety, and the Threat Assessment and Behavior Intervention team, Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of college policy and can be subject to disciplinary action for failure to comply with college policies. This policy also precludes employees from sharing information regarding an incident with others who do not have a need to know, and doing so can result in disciplinary action for the employee.

Confidentiality and Reporting

Students may talk with a KCC Counselor to seek assistance and support without triggering a College investigation that could reveal the victim's identity or that the victim has disclosed the incident. Counselors are not required to report any information about an incident without a victim's permission.

KCC employees have the same confidential reporting option with the College's Employee Assistance Program.

A victim who wants to maintain confidentiality must understand that the College will be unable to conduct an investigation into the particular incident or pursue disciplinary action. Persons who at first request confidentiality may later decide to file a complaint with the College or report the incident to local law enforcement, and thus have the incident fully investigated.

Requests for confidentiality may not be granted where state law or professional licensing mandates reporting in extreme cases of immediate threat or danger, imminent harm to self or others, or abuse of a minor.

Approved by KCC Board of Trustees, August 15, 2018