

KALMAZOO VALLEY COMMUNITY COLLEGE

TITLE IX POLICY AND GRIEVANCE PROCEDURE

March 2025

I. Policy Statement

Members of the College community, guests, and visitors have the right to be free from all forms of sexual harassment that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's educational programs and activities. All members of the College community are expected to conduct themselves in a manner that does not infringe upon the rights of others. No employee, student or other person shall engage in sexual harassment as defined by this policy. Upon actual notice, the College will take prompt and effective steps to end such conduct, prevent its recurrence, and remedy any discriminatory effects on the victim and others as appropriate. These steps may include sanctions and disciplinary action up to and including termination of employment for employees and expulsion for students. The policy applies to any violation that occurs on College property, or during or in connection with a College educational program or activity, even if the program or activity is occurring off College property.

This policy applies to all members of the College community, including but not limited to students, administrators, managers, supervisors, staff, faculty, customers, vendors, or others who conduct business with the College or who visit any College campus. This policy applies regardless of sex or any other characteristic protected under the College's Non-Discrimination and EEO Policies.

In accordance with the grievance procedures set forth below, Kalamazoo Valley Community College (KVCC) will investigate and address any and all formal complaints of conduct prohibited by this policy. The College will also provide appropriate programming to promote the awareness of sexual misconduct and harassment for all employees and incoming students. This program will include information regarding safe and positive options for bystander intervention and information on risk reduction.

The College prohibits retaliation, including retaliatory harassment. Retaliation against any person for alleging sexual misconduct or harassment, for making a complaint under this policy, or for participating in an investigation of such a complaint is also a violation of KVCC policy. Any person who retaliates against a person who engages in protected activity under this policy will be subject to disciplinary action up to and including termination of employment for employees and expulsion for students.

Additionally, knowingly making false allegations of a violation of this policy or providing evidence with the knowledge that it is false is also a violation of this policy and will subject a person to appropriate disciplinary action.

Any person who believes that he or she has been subjected to a violation of any part of this policy should immediately report such incident(s) in accordance with the "Reporting Options and Resources" section of this policy (Section IV). Discrimination that does not constitute sexual harassment as defined in this policy will be reviewed under the College's Anti-Discrimination Policy.

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II. Reason for Policy

Sexual harassment, including dating violence, domestic violence, sexual exploitation, sexual assault, and stalking violates the law, undermines the integrity of the College, traumatizes individuals, creates tension in the workplace and academic environment, and causes friction between employees and/or students.

KVCC is committed to maintaining a positive learning and working environment for students, faculty and staff. All forms of sexual harassment detract from a positive environment and are absolutely prohibited. Such conduct unreasonably interferes with an individual's work or educational performance and/or can create an intimidating, hostile or offensive work or learning environment.

III. Related Documents

A. College Documents:

1. Student Handbook
2. Annual Security Report
3. Employee Handbook

B. Laws and Regulations:

1. The Elliott-Larsen Civil Rights Act
2. Title IX of the Education Amendments of 1972
3. Title VI of the Civil Rights Act of 1964
4. Title VII of the Civil Rights Act of 1964
5. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
6. Violence Against Women Reauthorization Act of 2013
7. Part 106 of Title 34 of the Code of Federal Regulations

IV. Contacts

- A. Title IX Coordinator: Dannie Alexander, 269-488-4434, titleix@kvcc.edu or dalexander@kvcc.edu
- B. Student Relations Coordinator: Russ Panico, 269-488-4393, rpanico@kvcc.edu
- C. Director of Human Resources: Amy Reynolds, 269-488-4576, areynolds@kvcc.edu
- D. Director of Public Safety: Sean Gordon, 269-488-4341, sgordon@kvcc.edu

V. Definitions

- A. **Sexual Harassment:** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 1. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; or
 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively

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denies a person equal access to the College's education programs and activities; or

3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(11), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(36).

- B. Dating Violence:** The definition of dating violence is set by 34 U.S.C. 12291(a)(11), as amended, but is reproduced here: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:

1. The reporting party's statement;
2. The length of the relationship;
3. The type of relationship; and
4. The frequency of interaction between the persons involved in the relationship.

- C. Domestic Violence:** The definition of domestic violence is set by statute, being 34 U.S.C. 12291(a)(12), as amended, but is reproduced here: a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the state of Michigan and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who -

1. is a current or former spouse or intimate partner of the victim, or personally similarly situated to a spouse of the victim;
2. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
3. share a child in common with the victim; or
4. commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the state of Michigan.

- D. Sexual Assault (Including Rape):** The definition of sexual assault is set by statute, 20 U.S.C. 1092(f)(6)(A)(v), as amended, but is reproduced here: having or attempting to have penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim

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- E. Stalking:** The definition of stalking is set by statute, being 34 U.S.C. 12291(a)(36), as amended, but is reproduced here: engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.
- F. Reasonable person:** is a legal term that courts generally define as a prudent, hypothetical person with ordinary sensitivities who embodies a community ideal of reasonable behavior.
- G. Employee:** Anyone employed by KVCC, including all student employees, faculty, staff, and administrators, full or part time.
- H. Supervisor & College Official:** Anyone who oversees, directs, or evaluates the work of others, including but not limited to, managers, Board of Trustee Members, volunteers, administrators, independent contractors, coaches, directors, deans, department heads, program directors, counselors, advisors, coordinators, persons who manage student workers as well as faculty members in their role as instructors, and as participants in decisions affecting the careers of other faculty members.
- I. Students:** A person who has gained admission
- J. Complainant:** Any person who is the reported victim of an act or conduct that may violate this policy.
- K. Formal Complaint:** A document filed and signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate a report of sexual misconduct or harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a College program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or electronically. A complainant may withdraw his or her formal complaint at any time.
- L. Respondent:** Any person who is reported to have violated this policy.
- M. Retaliation:** To intimidate, threaten or coerce, or otherwise discriminate against any individual for exercising their right to file a good faith complaint of a violation of this policy or to participate in an investigation of an alleged violation. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others. Retaliatory conduct is prohibited and constitutes a violation of this policy, and will be grounds for disciplinary action up to and including termination or expulsion.

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- N. **College Program or Activity:** Includes locations, events, or circumstances within the United States over which the College operates as a college, including any building owned or controlled by a student organization that is officially recognized by the College. Locations or events where the College does not exercise substantial control over are not considered a College Program or Activity. Further, a program or activity can include conduct that occurs off campus in the context of College employment, education, or research programs or activities, including but not limited to, internships, graduated and professional programs, athletics, clubs, other affiliated programs, or conduct that occurs off campus but has continuing adverse effects on campus or in any College program or activity.

VI. Constitutional Protections

This policy shall not be interpreted to restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution, deprive a person of any right that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendment, or restrict any other rights guaranteed against government action by the U.S. Constitution. The protections of the First Amendment will be considered in complaints involving speech or expressive conduct. Speech or expressive conduct that constitutes sexual harassment is not protected speech of the proper exercise of academic freedom.

VII. Reporting Options and Resources

KVCC takes all complaints, both formal and informal, seriously. All formal complaints subject to KVCC's jurisdiction will be investigated pursuant to the grievance procedure contained in this policy. Complainants and Respondents will be treated equitably during the grievance process, which requires an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness. Evidence gathered, including witness statements and interview notes, will be only shared as necessary with investigators, witnesses, the Complainant, Respondent, and appropriate KVCC officials. Employees with access to this information are required to maintain appropriate confidentiality of the investigation to the extent reasonable in the context of conducting an adequate, reliable, and impartial investigation.

- A. **Reporting Options:** All individuals are encouraged to promptly report conduct that may violate this policy to KVCC. In addition, all individuals are encouraged to report conduct that may also violate criminal law to both KVCC and to local law enforcement. These processes are not mutually exclusive. Any student, employee, or third party who seeks to make a complaint or report may:
1. Make an internal complaint/report to the Title IX Coordinator, Student Relations Coordinator, or Director of Human Resources;

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2. Contact the Department of Public Safety for assistance in filing a criminal complaint and preserving physical evidence; and/or
3. Contact local law enforcement to file a criminal complaint.

Complainants may pursue some or all of these steps at the same time (e.g., one may simultaneously pursue a Title IX formal complaint and a criminal complaint). When initiating any of the above, Complainants need not know whether they wish to request any particular course of action, nor how to label what happened. Choosing to make a complaint, and deciding how to proceed after making the complaint, can be a process that unfolds over time. Before or during this decision-making process, Complainants and other reporting persons are encouraged to seek support and information from a Confidential Resource.

KVCC is committed to remedying the effects of any sexual harassment. Supportive measures are available regardless of a person's decision to file a formal complaint. Reasonable interim measures are available and may be imposed that consider the known facts and circumstances, the existence of a potentially hostile environment, and the interests of both the Complainant and Respondent. More information about interim and supportive measures is set forth in Section VIII of the policy.

- B. Complainant Autonomy Not to Proceed:** Where a Complainant requests that the Complainant's name or other identifiable information not be shared with the Respondent, that no investigation occur, or that no formal action be taken, KVCC will balance this request with its obligations to provide a safe and non-discriminatory environment for all College community members, including the complainant or person who reported the incident, and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a Respondent.

KVCC's Title IX Coordinator will consider all known and relevant facts and circumstances in evaluating requests for confidentiality, that no investigation occur, or that no formal action be taken. Some examples of relevant facts and circumstances that warrant consideration include:

1. The nature and scope of the alleged conduct, including whether the reported misconduct involves the use of a weapon;
2. The Complainant's wish to pursue disciplinary action;
3. The respective ages and roles of the Complainant and Respondent;
4. The risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
5. Whether there have been other reports of harassment or misconduct by the Respondent;
6. Whether the Respondent threatened further sexual violence or other violence against the Complainant or others;

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7. Whether the report reveals a pattern of harassment or misconduct at a given location or by a particular group such that there is an increased risk of future acts of sexual violence under similar circumstances;
8. Whether KVCC possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence);
9. Considerations of fundamental fairness with respect to the Respondent should the course of action include disciplinary action against the Respondent; and
10. KVCC's obligation to provide a safe and non-discriminatory environment.

Where the College determines that action should be taken that is inconsistent with the request of the Complainant, the Title IX Coordinator will inform the Complainant about the chosen course of action, which may include the College initiating disciplinary action against a Respondent with the Title IX Coordinator as the named Complainant. Alternatively, the course of action may also include steps to limit the effects of the alleged conduct and prevent its recurrence that do not involve disciplinary action against a Respondent or disclosing the identity of the Complainant.

- C. Privacy and Confidentiality:** KVCC is committed to protecting the privacy of all individuals involved in a report of sexual misconduct or harassment. All College employees who are involved in the College's Title IX response, including the Title IX Coordinator and investigators, receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report. Nothing in this policy should be construed as prohibiting or limiting either party from discussing this matter. As a public institution, the College has obligations under state law to produce public records upon receipt of a proper request. It is also possible that the information gathered during an investigation will be subject to subsequent legal or administrative proceedings which will require disclosure of the contents and results of the investigation.

Privacy and confidentiality have distinct meanings under this policy.

1. *Privacy:* Privacy generally means that information related to a report of misconduct will only be shared with a small circle of individuals, including, but not limited to, the Complainant, Respondent, the parties' advisors, key College stakeholders, and law enforcement. The use of this information is limited to those KVCC employees who are directly involved in the resolution of a report under this policy. While not bound by legally-privileged confidentiality, these individuals are required by this policy to

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reasonably respect the privacy of all individuals involved in the process.

2. *Confidentiality*: Confidentiality means that information shared by an individual with designated campus or community professional **cannot** be revealed to any other individual without express permission of the individual. Those campus and community professionals who can hold legally-privileged conversations recognized by law include medical providers, mental health providers, ordained clergy/pastoral counselors and rape crisis counselors. These individuals are prohibited from breaking confidentiality without express permission of the individual seeking services, unless there is an imminent threat of harm to self or others, or the conduct involves suspected abuse of a minor. When a report involves suspected abuse of a minor under the age of 18, these confidential resources are required by state law to notify child protective services and/or local law enforcement.

- D. Confidential Resources:** The following Confidential Resources are also available to individuals seeking assistance:

The following Confidential Resources are available to individuals seeking confidential assistance:

- Counselors located at the Student Success Center @ 269-488-4040.
- Off campus community resources, including rape crisis counselors, domestic violence resources, local state assistance agencies, ordained clergy/pastoral counselors.
- Employee Assistance Program: Uprisehealth @ 800-386-705. KVCC employees who are Confidential Resources may submit anonymous statistical information for Clery Act purposes, but will not otherwise share identifying information without the permission of the Complainant. Confiding in a Confidential Resource does not trigger an investigation or other action by KVCC.

- E. Responsible Employees:** Certain employees are designated as Responsible Employees. Under Title IX, KVCC is required to take immediate and corrective action if a Responsible Employee has actual knowledge about sexual misconduct or harassment prohibited under Title IX. A Responsible Employee includes any employee who has the authority to take corrective action to redress sexual misconduct or harassment.

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KVCC requires that all Responsible Employees immediately report allegations of violation of this policy to the Title IX Coordinator or designee, who will contact the Complainant. This connects a Complainant to information and resources and enables the College to take appropriate action to eliminate, prevent and address any hostile environment that may exist. The following officials have been designated as Responsible Employees for complaint reporting purposes:

- The Title IX Coordinator
- Public Safety Officers and Employees
- Human Resources Administrators
- President, Vice Presidents
- Department Chairs and Directors, Deans, and other Academic unit heads

Responsible Employees will safeguard an individual's privacy and only share information with a small circle of individuals who are directly involved in the resolution of a report under this policy. Responsible Employees are nonetheless required by KVCC to immediately share all known details of the incident (date, time, location), the names of the parties involved, and a brief description of the incident with the Title IX Coordinator or designee in person, by telephone or electronically.

- F. Other Employee Reporting Obligations.** The College designates many KVCC employees as mandatory reporters in other College policies. The College strongly encourages individuals affected by discrimination, including sexual harassment or misconduct to talk to someone and obtain support services. The College requires most College employees to bring any reports of violations of this policy to the attention of the Title IX Coordinator and public safety. Mandatory reporters must report details of the incident (date, time, location), the names of the parties involved, and a brief description of the incident with the Title IX Coordinator or designee in person, by telephone or electronically.

Students and employees should be aware of the reporting options available to them so they can make informed choices about disclosing details of an incident. Individuals who choose to discuss an incident only in a privileged/confidential setting should understand the College cannot conduct an investigation into the incident, or pursue disciplinary action, unless the incident is reported to the Title IX Office. However, counselors and advocates who are able to maintain confidentiality will still assist their clients in receiving support services, regardless of whether or not a report is made.

VIII. Reporting: Additional Considerations

- A. Timeliness and Location of Incident:** All potential Complainants are encouraged to report sexual misconduct and harassment as soon as possible in order to maximize KVCC's ability to respond promptly and effectively. KVCC

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does not, however, limit the time frame for reporting. If the Respondent is not a member of the College community at the time of the report, KVCC will still provide reasonably available support for a Complainant, but its ability to investigate and/or take action may be limited. KVCC will, however, assist a Complainant in identifying external reporting options.

An incident does not have to occur on campus to be reported to KVCC, although it may impact the ability of KVCC to investigate and reach determinations relative to the complaint.

- B. Anonymous Reporting:** Any individual may make an anonymous report concerning an act of sexual misconduct or harassment. Individuals may report the incident without disclosing their name, identifying the parties involved or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, KVCC's ability to respond to an anonymous report may be limited. An anonymous report may be made by email at: titleix@kvcc.edu or by telephone at: 269-488-4434.

The Title IX Coordinator will receive the anonymous report and determine any appropriate steps in light of the available information. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may impact KVCC's ability to respond or take further action. Where there is sufficient information, KVCC will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

- C. Amnesty for Alcohol or Other Drug Use:** To encourage reporting, individuals who in good faith report conduct prohibited by this policy, either as a Complainant or a witness, will not be subject to disciplinary action by KVCC for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. KVCC may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

- D. Coordination with Law Enforcement:** KVCC encourages Complainants and Respondents to pursue their rights under Michigan law regarding claims of prohibited conduct that may also violate state law. The College will offer assistance to involved parties by directing them to law enforcement agencies regarding criminal reports and cooperating with law enforcement agencies. A Complainant may choose to notify, or decline to notify, law enforcement. In the context of sexual assault, domestic violence, dating violence and stalking federal law mandates that it is an adult Complainant's option to notify or decline to notify law enforcement.

KVCC's policy, definitions and burden of proof may differ from Michigan criminal law. The parties involved may seek recourse under this policy and/or

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pursue their rights under Michigan law. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus, although concurrent law enforcement activity may constitute good cause to delay or extend the timelines for the College's investigation.

IX. Interim and Supportive Measures:

Any individual who reports sexual misconduct or harassment can be assured that all reports will be reviewed and resolved in a fair and impartial manner. All individuals involved can expect to be treated with dignity and respect. In every report under this policy, KVCC will make an immediate assessment of any risk of harm to the Complainant or to the broader campus community and will take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.

During the College's initial review with a Complainant, whether the reported violation of misconduct was provided to the College by the Complainant or a third party, the College will provide the Complainant with information about the formal investigation process and a copy of the policy and will request the Complainant confirm the desire to move forward with a formal investigation. Conduct which is not sexual harassment, as defined in this policy will not be reviewed under the formal complaint process, but may be reviewed under other applicable College policies, handbooks, or codes of conduct.

Interim measures will be designed to protect the parties involved. The provision of interim measures may be imposed at any time regardless of whether disciplinary action is sought by the Complainant or KVCC. Interim measures will be kept private to the extent that maintaining that privacy does not impair the ability of KVCC to provide the interim measures.

Interim Measures are initiated based on information gathered during a report and are not intended to be permanent resolutions; hence, they may be amended or withdrawn as additional information is gathered. The Title IX Coordinator/investigator, in consultation with other administrators, will maintain consistent contact with the parties so that all safety, emotional, and physical wellbeing concerns can be reasonably addressed.

Specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. KVCC will consider the following factors in determining what interim measure(s) to take, including, for example, the specific needs expressed by the Complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the Complainant; whether the Complainant and Respondent share the same class, transportation, or job location; and whether other judicial measures have been taken to protect the Complainant (*e.g.*, civil protection orders). Interim measures will be imposed in a way that minimizes the burden

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on the Complainant to the extent possible while still balancing the rights of the Respondent. KVCC reserves the right to remove a respondent on an emergency basis as outlined in more detail below.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. KVCC will take immediate and responsive action to enforce a previously implemented measure.

Interim measures will be implemented at the discretion of KVCC and may change over time. Potential remedies, which may be applied to the Complainant and/or the Respondent, include, but are not limited to:

1. Imposition of a mutual “No Contact” order
2. Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sanctions
3. Change in work schedule or job assignment
4. Providing academic support services, such as tutoring
5. Interim suspension or KVCC-imposed leave
6. Counseling
7. Campus escort services
8. Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy

No Contact Order: A campus no-contact order is issued by a KVCC official and requires that an individual have no contact with a particular person or persons. Contact is considered any verbal, written, electronic, non-verbal gesture, third party messages, indirect loud talking in the vicinity of the person and could include indirect actions that appear to KVCC to be intimidating. KVCC may add to the terms of no contact within the context of the reported incident that preceded the order or concerns that have arisen during the investigation or conduct process. The determination to impose a no-contact order will be made on a case-by-case basis and will take into account the request of the Complainant.

Emergency Removal: Where the report of prohibited conduct poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal KVCC functions, KVCC may remove a student on an emergency basis. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other KVCC activities or privileges for which the individual might otherwise be eligible, as the College determines appropriate. The Respondent will be provided notice and an opportunity to challenge the emergency removal.

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X. Resolution Options and Procedures

A. Overview of Options: Upon receipt of a complaint or report or a complaint, the Title IX Coordinator or designee will conduct an initial Title IX assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual harassment. As described in greater detail below, the assessment will consider the nature of the report, the safety of the individual and of the campus community, whether the College has jurisdiction over the matter, the Complainant's expressed preference for resolution, and the necessity for any interim measures, remedies or accommodations to protect the safety of the Complainant or the community, and the appropriate considerations for the Respondent.

At the conclusion of the assessment, the Title IX Coordinator will determine the appropriate course of action, which may include offering informal resolution, or a formal investigation to determine if there has been a policy violation. The Title IX Grievance Procedures contained in this policy will apply for any matter governed by Title IX. The Title IX Decision-Maker will determine appropriate sanctions based on the findings in the Investigation and the appropriate Student Code of Conduct, Collective Bargaining Agreement, College Policy, or other applicable handbook. In determining whether this policy has been violated, KVCC will apply the preponderance of the evidence standard (more likely than not).

Resources are available for both students and employees, whether as Complainants, Respondents or third parties, to provide support and guidance throughout the investigation and resolution of the complaint.

Throughout the process, the Complainant and the Respondent have the option to have one other individual (which may be legal counsel) to act as an advisor who may be present at any meeting or interview related to the investigation or a subsequent disciplinary proceeding or appeal hearing. However, in an investigation interview or hearing, the Complainant and the Respondent must answer questions directly. The advisor may not provide statements or answer questions.

During an interview, an advisor is a silent and non-participating presence who is there solely to observe and provide support during the investigative process. The Complainant or Respondent may, however, request to speak to their advisor privately in a nearby room. Neither the Complainant nor the Respondent nor their advisor may take photographs or make audio or video recordings. Prior to participating in any meeting, the advisor may be required to meet with a KVCC administrator for an orientation to KVCC's policies and procedures, privacy protections and expected participation/decorum. During an investigation hearing, the advisor will be tasked with cross-examining a party and can ask questions. Neither party may directly conduct cross-examination of the other party.

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- B. Title IX Assessment:** When a report is made, the Title IX Coordinator or designee will conduct an initial Title IX assessment. If the conduct alleged in a complaint would not constitute sexual harassment even if proved, it did not occur in the United States, or it did not occur in a College program or activity, KVCC is required to dismiss the complaint for the purposes of Title IX. However, the College reserves the right to continue its investigation or impose discipline under this policy or other College policies. In the course of this assessment, KVCC will consider the interest of the Complainant and the Complainant's expressed preference for manner of resolution. As outlined in this policy regarding the Complainant's autonomy not to proceed, where possible and as warranted by an assessment of the facts and circumstances, KVCC will seek action consistent with the Complainant's request.

As part of the initial assessment of the facts, KVCC will:

1. Assess the nature and circumstances of the report;
2. Address immediate physical safety and emotional well-being;
3. Notify the Complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist the Complainant with notifying law enforcement;
4. Notify the Complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence;
5. Notify the Complainant of the importance of preservation of evidence;
6. Assess the reported conduct for any necessary actions under the Clery Act, including inclusion in the daily crime log, annual security report, or issuance of a timely warning;
7. Provide the Complainant and Respondent, if notified, with information about: on and off-campus resources, the range of interim accommodations and remedies, and an explanation of the procedural options;
8. Inform the Complainant and Respondent that if the allegations involve conduct that could constitute a crime each may have an advisor of their choosing, which may include an attorney (at their own expense), colleague, or other person they identify, unless the advisor is a witness in the investigation; as noted above, the role of the advisor is to support the Complainant or Respondent, not to speak on behalf of or for them during any part of the process;
9. Assess for pattern evidence or other similar reported conduct by Respondent;
10. Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding; and
11. Explain KVCC's policy prohibiting retaliation.

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The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and KVCC has sufficient information to determine the best course of action.

At the conclusion of the Title IX Assessment, the Title IX Coordinator or designee will determine the appropriate manner of resolution. KVCC may: 1) pursue informal/ resolution with the mutual agreement of both the Complainant and Respondent; 2) initiate a formal Investigation to determine if there has been a policy violation, with either a named Complainant or as requested by the Title IX Coordinator, or; 3) dismiss the complaint. The determination as to how to proceed will be communicated to the Complainant in writing, which may include an email.

- C. Informal Resolution:** Informal Resolution is designed to eliminate any environment of harassment or misconduct after the filing of a formal complaint by taking alternative actions that do not involve disciplinary action against a Respondent. Both parties and the College must consent to participation in informal resolution, and any party, including the College, can request to end informal resolution at any time.

When informal resolution is utilized, a Complainant can still request interim and supportive measures. Other potential remedies include targeted or broad-based educational programming or training, supported direct confrontation of the Respondent and/or indirect action as determined by KVCC.

Prior to instituting an informal resolution process, KVCC will obtain the voluntary, written consent of both parties. Mediation may never be used in cases of sexual harassment where the Complainant is a student and the Respondent is an employee. The decision to use or offer informal resolution will be made when KVCC has sufficient information about the nature and scope of the conduct, which may occur at any time.

- D. Investigation:** The Title IX Coordinator will designate an investigator(s) of his/her choosing. The investigator may be a member of the Human Resources Department or any appropriately designated and trained employee of KVCC or an external investigator engaged to assist KVCC in its fact gathering. Any investigator chosen to conduct the investigation must be impartial and free of any actual conflict of interest and must have specific training and experience investigating allegations of sexual harassment. Either party can advise the Title IX Coordinator of any concern of conflict or impartiality at the start of the investigation process.

The investigation will be conducted in a reasonably prompt time frame and be thorough, impartial and fair. The exact timeline for an investigation will vary depending on the number of potential witnesses and the facts and circumstances surrounding the allegations. All individuals will be treated with sensitivity and respect and provided an equal opportunity to participate in the investigation and to

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provide inculpatory and exculpatory evidence. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns. All parties and witnesses are expected to provide truthful information. Knowingly providing false or misleading information is a violation of KVCC policy and can subject a party or witness to disciplinary action. The investigator or designee will provide timely updates, as appropriate or requested, about the timing and status of the investigation.

It is the responsibility and burden of KVCC, not the parties, to gather relevant evidence, to the extent reasonably possible. The investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case. The investigator will coordinate the gathering of information from the Complainant, the Respondent, and any other individuals who may have information relevant to the determination.

Once a formal complaint has been filed, KVCC will provide written notice to the party of the date and location of the interview including the following information, if known to the College: (a) the identities of the parties involved; (b) the specific section of the policy allegedly violated; (c) the conduct allegedly constituting a potential violation; and (d) the date and location of the alleged incident(s). KVCC will provide all parties with sufficient time to prepare to participate. As required by applicable regulation, the notice will include a statement that the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process, that the parties may have an advisor of their choosing present, that the advisor may or may not be an attorney, and that there will be an opportunity to inspect evidence before a final determination is made. The notice will also include a statement that a knowingly false statement or knowingly submitting false information is prohibited and may subject the party to disciplinary sanctions. In matters where the Title IX Coordinator is pursuing an investigation without a named Complainant, the Respondent will be provided the identity of the party involved, if known to the Title IX Coordinator. However, the Title IX Coordinator reserves the right to investigate matters without knowledge of an individual's identity.

The investigator will also gather any available physical evidence, including documents, communications between the parties, and any electronic records as appropriate. The Complainant and Respondent will have an equal opportunity to inspect and review any evidence obtained as part of the investigation, be heard, to submit information, and to identify witnesses who may have relevant information. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The investigator will determine the relevancy of any proffered information, and will not consider statements of personal opinion, rather than

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direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait, including honesty.

Medical and counseling records of a Complainant or Respondent are privileged confidential records that individuals are not required to disclose. However, these records may contain relevant and material information and a party may voluntarily choose to share such records with the investigator. Any records provided by a party become part of the file and will be made available to review by the opposing party.

In gathering information, the investigators may consider other allegations of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant and available. Such information may be relevant to prove motive, intent, absence of mistake, pattern or another material fact.

In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence during an investigation. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges that consent was given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will only be permitted under very limited circumstances, for example, to explain an injury or physical finding.

Any party seeking to introduce information about prior sexual history of the Complainant or prior misconduct by the Respondent should bring this information to the attention of the investigator at the earliest opportunity. The investigator may choose to consider this information, with appropriate notice to the parties. With respect to pattern evidence or prior sexual history of either party, the investigator, in consultation with the Title IX Coordinator, will assess the relevance, form, and reliability of the information (hearsay will not be permitted) and determine if it is appropriate for consideration in the determination of responsibility. Evidence regarding a pattern of behavior of the Respondent or the sexual history of either party will be allowed only if it is directly relevant to a disputed fact. The investigator and Title IX Coordinator have the discretion to consolidate multiple reports against a Respondent into one investigation and resolution if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident.

- E. Review of Investigation:** At the conclusion of the investigation, the investigator will prepare a written report that impartially summarizes the complaint, details the relevant information gathered, identifies the potential policy violations and synthesizes the areas of agreement and disagreement between the parties and any

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supporting information or accounts. In preparing the report, the investigator will review all information gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. Before the report is finalized, the Complainant and Respondent will be given an equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including any inculpatory or exculpatory evidence. Upon completion of a draft investigation report, the Complainant and Respondent will be provided a copy of the draft investigation report, and given no less than ten (10) days to submit any additional comment or evidence to the investigators after receipt of the draft investigative report.

After the comment period has lapsed with or without comment, the investigator will prepare a finalized investigative report, incorporating any comments and provide the report to Complainant, Respondent and the final decision maker for hearing and/or final determination. The final investigation report must be provided at least ten (10) days prior to a live hearing.

- F. Live Hearing Process:** When there is a formal complaint of sexual harassment or misconduct, KVCC must provide for a live hearing. A decision maker shall be designated, who shall not be the investigator, by the Title IX Coordinator to conduct the hearing. The hearing will be held in real time, either in-person or virtually, and shall be recorded or transcribed. The recording or transcription will be made available to either party upon request. At the request of either party, the hearing will be conducted with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or witness answering questions.

At the hearing, the decision maker must permit each party, through an advisor, to ask the other party, and any witnesses, relevant questions and follow-up questions, including those challenging credibility. A party is prohibited from directly cross examining another party. If a party does not have an advisor, KVCC will provide an advisor (who may or may not be an attorney), at no cost.

Prior to answering a question, the decision maker must determine whether the question is relevant and can exclude a question, upon explanation, as to why the question is irrelevant. In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence during a hearing, unless offered to prove that someone other than the Respondent committed the conduct reported or where there is a current or ongoing relationship between the Complainant and the Respondent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties concerning consent.

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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 final determination, provided, however, that the decision maker cannot draw an inference about the determination based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

- G. Final Determination:** The decision maker will simultaneously issue a written determination regarding responsibility to the parties applying the preponderance of the evidence standard. The written determination must include (i) identification of the allegations potentially constituting a policy violation; (ii) a procedural section describing the steps taken from receipt of complaint to final determination; (iii) findings of fact supporting the determination; (iv) conclusions regarding the application of the policy to the facts; (v) a determination as to each allegation; (vi) any disciplinary sanction(s) imposed on the Respondent; (vii) any remedies or continued measures provided to the Complainant (viii) the procedures and bases for either party to appeal.

- H. Appeal of Determination:** KVCC provides either Complainant or Respondent the opportunity to appeal a final determination, sanctions imposed, or a dismissal of a formal complaint, on the following bases (i) procedural irregularity that affected the outcome of the matter; (ii) new evidence not reasonably available at the time of the determination that could affect the outcome of the matter; or (iii) the Title IX Coordinator, investigator, or decision maker has a conflict or interest of bias for or against Complainant or Respondent that affected the outcome of the matter. An appeal must be filed within ten (10) calendar days of written notice of the final determination. The other party will have ten (10) calendar days to respond to the appeal in writing.

The decision maker for any appeal will be a different individual than the decision maker that reached the determination or dismissal, the investigator, or the Title IX Coordinator. The appeal decision maker shall issue a written decision simultaneously to both parties within fourteen (14) calendar days of receiving all appeal documents. These timeframes can be extended for good cause, at the discretion of KVCC, if requested in writing.

- I. Imposition of Sanctions:** KVCC will use its best efforts to complete its investigation and impose sanctions, if warranted, in a reasonably prompt manner, although the time frame may be extended for good cause. Good cause may exist for a variety of factors, including the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, or to address other legitimate reasons. Both the Complainant and Respondent will be notified of any delay, the reason for the delay, and an anticipated time frame for the delay.

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Whether sanctions are warranted and, if so, the nature of the sanction(s) will be determined by the decision-maker (“the disciplinary authority”) in accordance with the applicable handbook, policy and/or procedure based on the role of the Respondent (Student or Employee). In all cases, the sanction(s) will be designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, and while considering the impact on both the Complainant and the Respondent. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

- The disciplinary authority may consider the following factors:
- the nature of the conduct at issue;
- the impact of the conduct on the Complainant;
- the impact or implications of the conduct on the community or KVCC;
- prior misconduct by the Respondent, including the Respondent’s relevant prior disciplinary history, both at KVCC or elsewhere, and any criminal convictions;
- whether the Respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning;
- protection of KVCC community; and,
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

The disciplinary authority may impose any sanction deemed appropriate after a consideration of all of the relevant information.

The Complainant and the Respondent will be notified, in writing, of the sanction and the rationale for the sanction. The Respondent will be informed of any sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements. The Complainant will be informed of any sanctions that directly relate to the Complainant. The outcome letter will also provide each party with their appeal options, if any. If, under extenuating circumstances, there are any changes to the outcome, both parties will be simultaneously notified at the earliest possible time. KVCC may also notify appropriate administrators, including a direct supervisor of a Respondent, as necessary to implement the outcome and/or sanctions.

XI. Prevention, Education and Training

KVCC is committed to the prevention of sexual misconduct and harassment through education and awareness programs. KVCC is also committed to the protection of minors and the prevention of child abuse. Throughout the year, KVCC offers educational

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programs to promote awareness of sexual misconduct and harassment. Prevention programs include an overview of KVCC's policies and procedures, relevant definitions, including prohibited conduct, discussion of the impact of alcohol and drug use, effective consent, safe and positive options for bystander intervention, and information about risk reduction. Incoming first year students and new employees will receive primary prevention and awareness programming as part of their orientation. The Title IX Coordinator(s), investigators, decision-makers, and any person who facilitates an informal resolution process shall receive training on the definition of sexual harassment, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution process, and how to serve impartially. KVCC's Title IX Coordinator oversees the education and prevention calendar and tailors programming to campus needs and climate. All educational programs include a review of resources and reporting options available for students, faculty and staff.

As part of KVCC's commitment to provide an educational and work environment free from sexual misconduct and harassment, this Policy will be disseminated widely to the College community through email communication, publications, websites, new employee orientations, student orientations, and other appropriate channels of communication.

XII. Review of Policy

This policy will be reviewed on a periodic basis to incorporate evolving law and guidance, evaluate the supports and resources available to the parties, and assess the effectiveness of the investigation and resolution process.

XIII. Effective Date and Policy Effect

The Policy shall apply to all complaints made regardless of when the conduct was alleged to have occurred. This policy supersedes any policies and procedures to the contrary. The following records shall be maintained for a period of seven (7) years: All investigations under the policy and result therefrom, any interim measures imposed, any hearing and result therefrom, any appeal and result therefrom, any informal resolution and result therefrom, and materials utilized to train Title IX Coordinators, investigators and decision makers.