

Procedure 3.3.1A-P Sexual Misconduct Procedure Appendix A: Assessment and Investigation Process

A. Overview

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

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

B. Initial Assessment

In every report of sexual harassment or misconduct, KCTCS will make an immediate assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps may include interim protective measures to provide for the safety of the individual and the campus community.

The SO Title IX Committee assists in the review, investigation and resolution of reports. Members of this interdepartmental team may include, but are not limited to, representatives from Legal Services, Crisis Management, Student Affairs, Human Resources, and/or Academic Affairs. Composition of the team will be limited to a small circle of individuals who “need to know” in order to implement procedures under this policy.

In consultation with the college Title IX Coordinator, the System Office Title IX Committee will conduct an initial Title IX Assessment in order to provide an integrated and coordinated response to reports of sexual harassment and sexual misconduct. The assessment will consider the nature of the report, the safety of the individual and of the campus community, and when, possible, the Complainant’s expressed preference for resolution.

After consideration of the above factors, KCTCS may choose to pursue an informal resolution, which may include a remedies-based approach (reserved for less egregious violations). If the violation warrants, the SO Title IX Committee will refer the matter for investigation.

Upon completion of the investigation, the SO Title IX Committee reviews the investigative report to assess the strength of evidence and options for resolution. The SO Title IX Committee will discuss its recommendations with the college Title IX.

C. Investigation

When the Initial Title IX Assessment concludes that an investigation is required, KCTCS will designate an investigator(s) from System Office with specific training and experience investigating allegations of sexual harassment and sexual misconduct. KCTCS may use a team of two investigators, which may include the College Human Resources Director with a System Office investigator, or two System Office investigators.

The investigation will be a fair and reliable fact-gathering process. The investigation will be conducted thoroughly, impartially, and fairly. The investigation will be respectful of individual privacy concerns, but must be performed in a manner that will ensure KCTCS's compliance with all state and federal laws, including provision of due process to the Respondent.

An investigation will normally include interviews with the Complainant and with the Respondent. Pertinent witnesses may be interviewed. Interviews may be supplemented by the gathering of any physical, documentary or other evidence, if applicable. Both Complainant and Respondent will be given the opportunity to present witnesses or other evidence.

At the request of law enforcement, KCTCS may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. KCTCS will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. KCTCS will promptly resume its Title IX fact gathering as soon as law enforcement permits.

KCTCS will seek to complete the investigation within 20 (twenty) business days of receiving the complaint. This time frame may be extended depending on the circumstances of each case. At the conclusion of the investigation, the investigators will forward the report to the System Office Title IX Committee for review and evaluation.

Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the campus community, and impose remedies as necessary to address the effects of the conduct cited in the report. Where there is sufficient information set forth that, if proven, would constitute a violation of policy, KCTCS will have the discretion to institute Formal Resolution proceedings against the Respondent. At the conclusion of the investigation, KCTCS will notify the Complainant and the Respondent in writing that the investigation is complete. Notifications will include information about next steps in the process.

The college Title IX Coordinator will document each report or request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

D. Investigation of Complaints involving Students

1. Notice of Charges

If the Initial Assessment contains sufficient information to suggest a violation of the Sexual Misconduct Procedure, and the Complainant wishes to pursue disciplinary action, KCTCS will send a written Notification Letter to both the Complainant and the Respondent. The Notification Letter provides each party with a brief summary of the conduct at issue, the specific provision of the policy violations that are alleged to have taken place, and details about the process moving forward. The Notification Letter will also disclose the right of both the Complainant and Respondent to have advisors or support persons throughout the investigatory and disciplinary process. If either the Complainant or the Respondent elects to have advisors, the advisor is encouraged to accompany the Complainant/Respondent to all interviews.

2. Investigation

An investigation will be conducted as described in Section D above.

3. Advisors

The Complainant and the Respondent may choose to be assisted by an advisor of their choice during the process. The advisor may accompany the student to any investigative or administrative meeting that is part of this process.

The inability to accommodate the advisor's schedules shall not cause undue delay to the process. If a meeting cannot be scheduled with the advisor in a reasonable amount of time, the student may have to choose a different advisor for that meeting.

The advisor cannot be a witness in the proceedings. The advisor is a silent and non-participating presence who is there solely to observe and provide moral support during the interviews. The advisor is not to address the interviewers, except to request a short recess if one of the parties requires a break.

Absent extenuating circumstances, witnesses and others involved in an investigation are not entitled to have an advisor present.

Attorney Advisors/Outside Agreements: The Complainant and the Respondent both have the right to have an attorney present during the investigatory process as the advisor. A Complainant or Respondent may choose to seek the advice and assistance of an attorney at his/her own expense, but the attorney may not actively participate in investigatory interviews, informal or formal resolution proceedings, or the appeals process. Attorneys, including family members acting as attorneys, may be present during this process, but they are not permitted to address, question or cross-examine the investigators. Additionally,

KCTCS will not recognize or enforce agreements between the parties outside of these procedures.

4. Witnesses

The Complainant and the Respondent have the right to present witnesses to be interviewed by the investigator(s). Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character. During the investigatory process, the investigators will determine if the proffered witness can provide relevant information and if there is sufficient justification for including witness statements in the report.

5. Respondent Pleading the Fifth

If a Respondent refuses to participate in the investigation to prevent the possibility of incriminating herself/himself during the process due to pending legal action, KCTCS will proceed, but will not infer an admission of guilt from that action.

E. Informal Resolution

Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that informal resolution may be appropriate, KCTCS will take immediate action to protect the rights of the Complainant and remediate and correct the policy violations leading to the complaint. Examples of protective remedies may include but are not limited to:

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

Other potential remedies include targeted or broad-based educational programming or training, direct confrontation of the Respondent and/or indirect action by the Title IX Coordinator or KCTCS. Depending on the form of informal resolution used, it may be possible to maintain the Complainant's anonymity.

KCTCS will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual violence or assault. The decision to pursue informal resolution will be made when KCTCS has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution in favor of a formal resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within forty-four (44) business days of the initial report. This time frame may be extended depending on the circumstances of each case.

F. Formal Resolution

When an investigation demonstrates that sufficient evidence exists that a violation of policy and procedure has occurred, Respondents will be subject to disciplinary action based on their relationship to KCTCS.

- For a *student Respondent*, disciplinary action may be taken by the student's home college following a finding of responsibility by the Responsibility Assessment Committee. (See Appendix B)
- For an *employee Respondent*, disciplinary action may be taken by the supervisor in accordance with employment policies and procedures.
- For a *guest Respondent*, KCTCS will take the necessary action to ensure the policy violation does not recur and, if appropriate, involve local law enforcement.

G. Time Frame for Resolution

KCTCS seeks to resolve all reports within 60 days of the initial report. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Extenuating circumstances may arise that require the extension of time frames, including extension beyond 60 days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.

In general, a Complainant and Respondent can expect that the process will proceed according to the time frames provided in this policy. In the event that the investigation and resolution exceed this time frame, KCTCS will notify all parties of the reason(s) for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

At the conclusion of the Title IX assessment, the Title IX Committee and College Title IX Coordinator will determine the appropriate manner of resolution and, if appropriate, refer the report for further investigation, Informal Resolution or Formal Resolution.

H. Records

The College Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Complaints resolved by means of Title IX assessment or informal resolution are not part of a student's conduct file or academic record or of an employee's personnel record.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a student's conduct record and an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's personnel record.

The conduct files of students who have been suspended or expelled from KCTCS are maintained by Student Affairs indefinitely. Conduct files of students who have not been suspended or expelled are maintained by Student Affairs until at least five years after the student's last date of attendance. Further questions about record retention should be directed to the System Office Title IX Committee.