

# **KANSAS CHRISTIAN COLLEGE**

## **TITLE IX POLICY**

Kansas Christian College ("KCC" or "the College") does not discriminate on the basis of sex in its education programs and activities, including employment and admissions, as required by Title IX of the Education Amendments of 1972 ("Title IX"). All forms of sex-based discrimination are prohibited at the College. This policy focuses exclusively on sexual harassment as defined in Title IX that occurs within the education programs and activities of the College. However, the College will respond promptly to investigate and address any report or complaint of sexual harassment.

"Sexual harassment under Title IX" is conduct on the basis of sex within the scope of the College's education programs or activities (as defined in this policy) 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 sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College's education program or activity; 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)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8) or "stalking" as defined in 34 U.S.C. 12291(a)(30).

See the "*Definitions Applicable to this Policy*" section at the end of this document for definitions of other terms applicable to this policy.

### **Reporting Sexual Harassment or Title IX Retaliation**

Any person may report sexual harassment regardless of whether the person is the alleged victim (Complainant). However, employees must immediately report to the Title IX Coordinator any incident or behavior that could constitute sexual harassment or retaliation in accordance with this policy. Reports may be made at any time, including during nonbusiness hours, by using the telephone number, email address or office address listed below.

The College authorizes the following individual(s) to serve as the Title IX Coordinator(s) for the College and coordinate and implement the College's efforts to comply with the requirements of Title IX.

Leandra Martin, Title IX Coordinator

7401 Metcalf Ave., Overland Park, KS 66204

P: 913.722.0272 x8774

titleix@kansaschristian.edu

In the event the Title IX Coordinator is unavailable or is the Respondent to a complaint, reports should instead be directed to the College's compliance officer.

### **Notice of the Policy against Discrimination on the Basis of Sex**

The College will provide notice of the College's prohibition on discrimination on the basis of sex under College policy and Title IX to students, employees, applicants for admission, and applicants for employment. The notice will:

1. Include the name or title, office address, email address and phone number of the Title IX Coordinator;
2. Include information on the College's grievance procedures and grievance process;
3. State that the requirement not to discriminate extends to admission and employment; and
4. Direct inquiries to the Title IX Coordinator or the assistant secretary for civil rights at the U.S. Department of Education.

The College's policy prohibiting discrimination on the basis of sex and the contact information of the Title IX Coordinator(s) will be prominently displayed on the College's website and in each handbook or course catalog.

### **Retaliation Prohibited**

No person employed by or associated with the College will intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding or hearing under Title IX. While the law allows individuals to refuse to participate in a Title IX investigation, proceeding or hearing, College policy and the law require that employees immediately report to the Title IX Coordinator any knowledge of an allegation of sexual harassment under Title IX. Employees can be reprimanded or disciplined for failing to do so.

Intimidation, threats, coercion or discrimination, including charges against an individual for code of conduct violations, that do not involve sex discrimination or sexual harassment under Title IX but arise out of the same facts or circumstances as a report or Formal Complaint of sexual harassment under Title IX, for the purpose of interfering with any right or privilege secured by

Title IX, may constitute retaliation. Complaints alleging retaliation must be filed with the Title IX Coordinator.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of the grievance proceeding is not retaliation, with the understanding that a determination of responsibility for sexual harassment is not sufficient to conclude that a party made a materially false statement in bad faith.

## **TITLE IX GRIEVANCE PROCESS**

### **Intake and Classification of Reports**

The Title IX Coordinator will receive and review all reports of sexual harassment even if a Formal Complaint has not been filed. The context of behavior can make a difference between conduct falling within the technical definition of sexual harassment under Title IX and conduct of a sexual nature that is offensive or hostile in itself, but which does not constitute harassment within that definition. KCC policies prohibit both but, for purposes of its Title IX obligations, the College must specially address cases within the definition under this special, limited-scope policy.

If the Title IX Coordinator determines that the report concerns conduct that does NOT involve sexual harassment under Title IX as that term is defined in this policy or did not occur in the College's education program or activity, the Title IX Coordinator will use the grievance process in policy or forward the complaint to the individual responsible for implementing policy.

### **Procedures Prior to or without a Formal Complaint**

When the Title IX Coordinator has actual knowledge of an allegation of sexual harassment under Title IX in an education program or activity of the College, the Title IX Coordinator will promptly contact the Complainant and:

1. Provide information about the supportive measures available to the Complainant and inform the Complainant that he or she may receive supportive measures without filing a Formal Complaint;
2. Consider the Complainant's wishes with respect to supportive measures and implement appropriate supportive measures;
3. Explain to the Complainant the process for filing a Formal Complaint.

### **The Formal Complaint Process**

The Complainant may file a Formal Complaint or choose not to file a Formal Complaint and simply receive the supportive measures.

If the Complainant does not file a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint initiating the grievance process. The Title IX Coordinator will do so only if initiating the grievance process against the Respondent is not clearly unreasonable in light of the known circumstances.

If no Formal Complaint is filed by the Complainant or signed by the Title IX Coordinator, no disciplinary action will be taken against the Respondent on the grounds of sexual harassment under Title IX.

### **Title IX Grievance Process upon Filing of a Formal Complaint**

The College's grievance process will provide a prompt and equitable resolution of complaints and will:

1. Treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent;
2. Comply with Title IX regulations before imposing any disciplinary sanctions or other actions that are not supportive measures against a Respondent;
3. Require a Hearing Panel to objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and not make credibility determinations based on a person's status as a Complainant, Respondent or witness;
4. Require that all Title IX Coordinators, investigators, those responsible for facilitating informal resolution processes and Hearing Panel do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
5. Presume that the Respondent is not responsible for the conduct until a determination of responsibility is made at the conclusion of the grievance process;
6. Follow stated timelines unless the College temporarily delays the grievance process for good cause (including, but not limited to, the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of a disability) and notify the parties in writing of the reason for a delay, if any; and
7. Not require, allow, rely upon or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.

### **Notice to the Parties**

When the Complainant files a Formal Complaint, written notice will be provided to all known parties and will include:

1. Notice of the grievance process, including any informal resolution process that is available and the timeline for such process;
2. Notice of the allegations of sexual harassment under Title IX made by the Complainant with sufficient details known at the time and with sufficient time to allow the Respondent to prepare before the initial interview. At a minimum, the

details will include the identities of the parties involved in the incident, if known, the conduct and the date and location of the alleged incident if known;

3. A statement that the Respondent is presumed not responsible for the conduct and that a determination of responsibility will be made at the conclusion of the grievance process;
4. A statement that parties may have an advisor of their choice, who may be an attorney;
5. A statement that the parties and their advisors will have an equal opportunity to inspect and review any evidence that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the College does not intend to rely, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;
6. Notice of any provision in the College's discipline code that prohibits knowingly making a false statement or providing false information during the grievance process.

If in the course of the investigation of sexual harassment under Title IX the College decides to investigate allegations about the Complainant or Respondent that were not in the initial notice, notice of the additional allegations will be provided to all known parties.

### **Range of Possible Disciplinary Sanctions and Remedies**

The discipline of employees is addressed in College policies, which are available on the College's website. An appropriate disciplinary response for an employee found responsible for sexual harassment in this grievance process may include any suitable response available for the discipline of employees for any other violation of College policy.

The discipline of students is addressed in the policies, regulations and procedures that establish the College's comprehensive code of student conduct, which is posted on the College's website.

Remedies may include the imposition upon a responsible Respondent of any additional nondisciplinary measures appropriate to effecting a remedy for sexual harassment and may include such measures as no-contact requirements, scheduling adjustments, removal or exclusion from extracurricular activities, class reassignments, limits on future class registrations, restrictions on access to various spaces in the school buildings, reassignment of attendance, and similar measures fine-tuned to respond appropriately to the circumstances surrounding a successful Complainant's right to access the College's education programs and activities.

### **Interim Action**

#### **Emergency Removal**

The College may remove the Respondent from the College's education programs and activities prior to the start or completion of the grievance procedure on an emergency basis provided that the College:

1. Performs an individualized safety and risk analysis;
2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
3. Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

### **Administrative Leave**

The College may place an employee Respondent on administrative leave during the pendency of the grievance process in accordance with College policy and law.

## **Investigating a Formal Complaint**

### **Consolidation**

Formal Complaints may be consolidated as to allegations of sexual harassment under Title IX against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

### **Investigation Process and Scope**

After the Formal Complaint is filed, an investigator will be assigned by the College. The investigation should be conducted by someone other than the Title IX Coordinator. The investigator will gather evidence sufficient to reach a determination of responsibility or non-responsibility and may not require the parties to do so.

During the investigation and the grievance process, the College will:

1. Provide equal opportunity to present witnesses, including fact and expert witnesses, and all evidence, including inculpatory and exculpatory evidence;
2. Not restrict the parties from discussing the allegations under investigation or gathering and presenting relevant evidence;
3. Provide the same opportunity for parties to have others, including an advisor of their choice, present during any grievance proceedings and related meetings, though the College may restrict the extent to which advisors may participate as long as the rules apply to both parties;
4. Provide written notice to parties who are invited or expected to participate of the date, time, location, participants and purpose of all hearings,

investigative interviews or other meetings with sufficient time for the parties to prepare to participate;

5. Obtain written, voluntary consent before accessing records, such as medical records or counseling notes, that a physician, psychiatrist, psychologist or other recognized professional or paraprofessional made or maintained in connection with the provision of treatment to the party;
6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. This includes evidence upon which the College does not intend to rely in reaching a determination of responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source;
7. Send to each party and the party's advisor, if any, the evidence subject to inspection and review prior to completion of the Investigative Report and within 20 business days of the parties receiving notice of the Formal Complaint. The evidence may be sent in an electronic format or hard copy. The parties will be given at least ten business days, as required by law, to submit a written response, which the investigator will consider prior to the completion of the report.

Upon conclusion of the investigation, the investigator will create a preliminary Investigative Report that fairly summarizes the relevant evidence. This preliminary Investigative Report will be provided in an electronic and hard copy format to each party and their advisors, if any, for their review and written response. The Complainant and Respondent and advisor to each part will have ten (10) business days to submit a written response to the evidence. Any responses submitted by Complainant and Respondent will be considered by the investigator prior to completion of the final Investigative Report.

At the end of the ten (10) business day response period, the investigator will draft a final Investigative Report. The final Investigative Report will be provided simultaneously to both parties, as well as the advisor for each party.

### **Dismissal of the Formal Complaint**

The College **must** dismiss a Formal Complaint if the allegations, even if proved:

1. Do not meet the definition of Title IX Sexual Harassment under this Policy;
2. Did not occur in the College's education program or activity; or
3. Were not committed against a person in the United States.

The College **may** dismiss a Formal Complaint or any allegations in a Formal Complaint at any time if:

1. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations in the Formal Complaint;
2. The Respondent is no longer enrolled in or employed by the College; or
3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination of responsibility based on the merits of the Formal Complaint or allegations therein.

The dismissal does not mean that a complaint cannot be made under another College policy or that any misbehavior will not be addressed under another policy or the College's code of conduct.

If the Formal Complaint is dismissed, the College will notify the parties simultaneously. A party may appeal the dismissal of a Formal Complaint by submitting a written notification of appeal to the President or designee within five (5) business days of receiving the notice that the complaint was dismissed. The request for appeal must be a signed, written document articulating why the dismissal of the Formal Complaint is erroneous.

The appeal shall be completed in compliance with the Appeals Procedures outlined in this Policy.

## **Hearings**

The final Investigative Report shall be forwarded to the Title IX Coordinator simultaneously with the provision of the report to the Complainant and Respondent to schedule a live hearing.

The live hearing must be scheduled for no sooner than fourteen (14) business days. Live hearings, at a minimum, will provide for the opportunity to cross exam parties through a party's advisor.

### **Selection of Hearing Chair**

The College shall maintain a pool of up to three suitably qualified individuals to serve as Hearing Chairs under these procedures.

All Hearing Chairs must receive Title IX training from the College as required in the College's Title IX Sexual Harassment policy, including, but not limited to, training on: (1) the College's definition of Sexual Harassment; (2) the scope of the College's education programs and activities; (3) how to conduct the various procedures and hearing specified herein; (4) how to serve impartially, including by avoiding prejudice on the facts at issue, conflicts of interest, and bias; (5) relevance of questions and evidence, including when questions and evidence about a Complainant's sexual history are not relevant; and (6) training on any audio or video technology that may be used to effectuate the pre-hearing conference or hearing.



The Title IX Coordinator shall select a member of the pool to serve as Hearing Chair giving due regard to factors such as the individual's availability to promptly conduct a hearing; the individual's general familiarity of the College's operations from which the Formal Complaint arose; and potential conflicts of interest that may exist based on the identity of the parties or subject matter involved.

After the Title IX Coordinator selects the Hearing Chair, the Title IX Coordinator will provide the parties with written notice of the Hearing Chair's selection. Such notice shall advise the parties they have three (3) business days from receipt of the notice to advise the Title IX Coordinator of any objection to the selected Hearing Chair based on a claimed conflict of interest or bias.

If any party claims a conflict of interest or bias on the part of the selected Hearing Chair, the Title IX Coordinator shall determine whether, in fact, such a conflict of interest or bias exists. If the Title IX Coordinator determines a conflict of interest or bias exists, the Title IX Coordinator shall select a new Hearing Chair and provide parties with written notice as specified in this section. If the Title IX Coordinator determines that a conflict of interest or bias does not exist, the Title IX Coordinator shall notify the parties in writing, and the matter will proceed with the identified Hearing Chair.

#### **Review for Discretionary Dismissal**

After the selection of the Hearing Chair, and prior to the selection of a Hearing Panel, the Hearing Chair, in consultation with the Title IX Coordinator, will review the final Investigative Report, together with all evidence directly related to the allegations of Sexual Harassment in the Formal Complaint, and determine whether the Formal Complaint should be dismissed for any one or more of the following grounds:

1. The Complainant has provided the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
2. The Respondent is no longer enrolled or employed by the College, as the case may be; or
3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Hearing Chair determines the Formal Complaint should be dismissed pursuant to this section, the Hearing Chair will provide written notice of dismissal to the parties and advise them of their right to appeal as specified herein. The Hearing Chair may refer the dismissed allegations for resolution by other College offices or for resolution by other College processes, as appropriate.

### **Selection of Hearing Panel**

If the Formal Complaint is not dismissed, the Title IX Coordinator shall select three (3) individuals to serve as the Hearing Panel in addition to the Hearing Chair. At least one (1) of the three (3) persons selected must share the same status as the Respondent (i.e., faculty, student, or staff). Such individuals shall be selected giving due regard to factors such as the individual's availability to promptly participate in a hearing; the individual's general familiarity with the particular aspect of the College's operations from which the Formal Complaint arose; potential conflicts of interest that may exist based on the identity of the parties or subject matter involved; and equal distribution of cases across the pool.

Such individuals shall be drawn from a pool of sixteen (16) suitably qualified individuals. The pool shall include at least four (4) students, four (4) faculty, and four (4) staff. Student members shall be appointed by the Dean of Student Services. Faculty members shall be appointed by the Vice President of Academic Affairs. Staff members shall be appointed by the Vice President of Operations. The remaining four (4) members (who may be students, faculty, staff, or some combination thereof) shall be appointed by the President in his or her sole discretion. Pool members shall serve two-year (2) terms which may be renewed by the appointing authority for a second two-year (2) term. Notwithstanding the foregoing, half of each category of pool members shall serve an initial one-year (1) term, which may be renewed by the appointing authority for a second two-year (2) term.

Such individuals shall receive training from the College on the College's definition of Sexual Harassment; the scope of the College's education programs and activities; the individual's role at the hearing as specified herein; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; relevance of questions and evidence, including when questions and evidence about a Complainant's sexual history are not relevant; and training on any audio or video technology that may be used to effectuate the pre-hearing conference or hearing.

After the Title IX Coordinator selects the Hearing Panel, the Title IX Coordinator shall provide the parties with written notice of the Hearing Panel's selection. Such notice shall advise the parties that the parties have three days from receipt of the notice to advise the Title IX Coordinator of any objection a party may have based on a claimed conflict of interest or bias.

If any party claims a conflict of interest or bias on the part of a member of the selected Hearing Panel, the Title IX Coordinator shall determine whether, in fact, such a conflict of interest or bias exists. If the Title IX Coordinator determines a conflict of interest or bias exists, the Title IX Coordinator shall select a new member of the Hearing Panel and provide the parties with written notice as specified in this

section. If the Title IX Coordinator determines a conflict of interest or bias does not exist, the Title IX Coordinator shall notify the parties, in writing, and the matter will proceed with the identified Hearing Panel.

### **Pre-Hearing Procedures**

#### ***Hearing Notice and Written Response to Investigative Report***

After the Hearing Chair and Hearing Panel are selected, the Hearing Chair will send written notice to the parties notifying them of the deadline for the parties to submit any written response to the Investigative Report; a date for the pre-hearing conference; and a date and time for the hearing (to include an anticipated length in hours). Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than fourteen (14) days from the date of transmittal of the written notice specified in this section.

A Party's written response to the final Investigative Report must include:

1. To the extent the party disagrees with the Investigative Report, any argument or commentary regarding such disagreement;
2. Any evidence that a party did not have a reasonable opportunity to provide during the investigation or that the party believes was improperly excluded by the investigator;
3. Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified herein, or for any other reason;
4. A list of any witnesses that the party contends should be called to attend the hearing pursuant to an attendance notice issued by the Title IX Coordinator;
5. A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the Hearing Chair;
6. Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
7. Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing; and
8. The name and contact information of the Advisor who will accompany the party at the pre-hearing conference and hearing.

A party's written response to the final Investigative Report may also include:

1. Arguments regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
2. Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

### ***Pre-Hearing Conference***

Prior to the hearing, the Hearing Chair will conduct a pre-hearing conference with the parties and their Advisors. By default, the pre-hearing conference will be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology. However, upon request of either party, or in the Hearing Chair's discretion, the pre-hearing conference may take the form of separate, sequential meetings between the Hearing Chair and each party, whether conducted virtually or in-person.

During the pre-hearing conference, the Hearing Chair will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the Investigative Report, as the Hearing Chair deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the Hearing Chair determines, in the Hearing Chair's discretion, should be resolved before the hearing.

### ***Issuance of Notices of Attendance***

After the pre-hearing conference, the Title IX Coordinator will transmit notices of attendance to any College employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will request the subject to appear at the hearing at the specified date and time and advise the subject to contact the Title IX Coordinator immediately if there is a scheduling conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisors, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide other accommodations, so that the subject may attend the hearing as specified in the notice.

The College has no control over the schedule or availability of any witness who is not an employee or a student, and a notice of attendance will not be issued to any such third-party individual.

## **Hearing**

### ***Nature of the Hearing***

The purpose of the hearing is for the Hearing Chair and Hearing Panel to receive relevant testimonial and non-testimony evidence; to resolve disputed facts using a preponderance of the evidence standard; and to determine whether the facts found substantiate one or more of the allegations in the Formal Complaint as a violation of the Sexual Harassment Policy. The hearing will operate from a presumption that the Respondent is not responsible for the alleged misconduct until a determination regarding responsibility is made final.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply.

### ***Setting and Recording***

The Title IX Coordinator will assist the Hearing Chair in arranging the logistics of the hearing including, but not limited to, securing a suitable space on campus, if the hearing is to be held in person or to secure access to appropriate technology if the hearing is to be held virtually. The Title IX Coordinator will also ensure that the hearing (but not deliberation) is video or audio recorded.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their Advisors. By default, the hearing will be conducted with the Hearing Chair, Hearing Panel, the parties, the advisors, witnesses, and other necessary College personnel in the same physical location.

In the Hearing Chair's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all parties participate simultaneously and contemporaneously by use of such technology.

### ***Parties in Attendance***

The hearing is closed to all persons except the parties, their Advisors, the investigator, the Hearing Chair, the Hearing Panel, the Title IX Coordinator and other necessary College personnel as determined by the Hearing Officer. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete.

### ***Convening the Hearing***

Immediately prior to convening the hearing, the Hearing Chair will ensure that an audio or video recording of the hearing is being made by the Title IX Coordinator and that the hearing room is cleared of all individuals who are not permitted to be present during the hearing. The Hearing Chair will then convene the hearing and clearly state for the record the date, time, and location of the hearing; the names of the Complainant and the Respondent;

the parties present at the hearing; any accommodations that have been provided at the request of a party or in the College's discretion; whether all or a portion of the hearing is being conducted virtually; and any other introductory matters that the Hearing Chair deems appropriate.

#### ***Statement of the Investigator***

After convening the hearing, the Hearing Chair will call the investigator to give an overview of the investigation process. Thereafter, the investigator will be subject to questioning by the Hearing Chair and Hearing Panel, followed by questioning from each party's Advisor commencing first with questioning from the Advisor for the Complainant followed by questioning from the Advisor for the Respondent.

#### ***Statement of the Parties***

After questioning of the investigator is complete, the Hearing Chair will invite the Complainant to provide a statement regarding the events in question and identify and comment on any non-testimonial evidence the Complainant believes is relevant. After the Complainant has made a statement, or waived the right to make a statement, the Complainant will be subject to questioning by the Hearing Chair and Hearing Panel, followed by questioning from the Advisor for the Respondent.

After questioning of the Complainant is complete, the Hearing Chair will invite the Respondent to provide a statement to the Hearing Chair regarding the events in question and to identify and comment on any non-testimonial evidence the Respondent believes is relevant. After the Respondent has made a statement, or waived the right to make a statement, the Respondent will be subject to questioning by the Hearing Chair and Hearing Panel, followed by questioning from the Advisor for the Complainant.

#### ***Testimony of Witnesses***

After questioning of the parties is complete, witnesses will be called to testify in the order determined by the Hearing Chair. Unlike the parties, witnesses will not be invited to make a statement but, instead, will be subject to questioning from the Hearing Chair and Hearing Panel, followed by questioning from each party's Advisor commencing first with questioning from the Advisor for the Complainant followed by questioning from the Advisor for the Respondent.

#### ***Investigative Materials***

After the questioning of the parties and witnesses is complete, the Hearing Chair will identify any portion of the evidence developed during the investigation that the Hearing Chair has determined should be excluded

from the hearing record based on rulings made at the pre-hearing conference, during the hearing itself, due to the refusal of a party or witness to submit to questioning by a party's Advisor, or for any other reason. The Hearing Chair will then provide the parties a final opportunity to raise any additional objections to inclusion of any other portions of the investigation record into evidence and resolve any such objections. All evidence from the investigation and hearing not specifically excluded by the Hearing Chair shall be deemed admitted into the hearing record and may be considered by the Hearing Chair and Hearing Panel as part of the deliberation.

### ***Closing Arguments***

After the Hearing Chair has ruled on the exclusion of any evidence developed during the investigation, the Hearing Chair will invite the Complainant to make a closing argument. After the Complainant has made a closing argument, or waived the right to make a closing argument, the Hearing Chair will invite the Respondent to make a closing argument.

### ***Deliberation***

After the closing arguments are complete, the Hearing Chair will conclude the hearing. Thereafter, the Hearing Chair and Hearing Panel will enter into deliberation, which shall be closed to all other persons with the exception of the College's legal counsel, whom the Hearing Chair may invite for the purpose of providing advice to the Hearing Chair and Hearing Panel.

### ***Access to and Use of Investigation Evidence***

During the hearing, the parties and their advisors shall have access to the Investigative Report and a copy of all evidence developed by the investigation directly related to the allegations of Sexual Harassment in the Formal Complaint. Such evidence may be utilized in the questioning of witnesses where relevant. Non-testimonial evidence utilized during the hearing shall be marked and referred to in such a manner as to make it clearly identifiable by audio (i.e., such as sequential marking of 'exhibits').

### ***Rulings on Evidence***

Throughout the hearing, the Hearing Chair will independently and contemporaneously screen all questions for relevance and resolve any contemporaneous evidentiary objections raised by the parties. If the Hearing Chair does not exclude a question, it is presumed the Hearing Chair has deemed the question relevant and admissible. The Hearing Chair may exclude evidence that is unreasonably cumulative or duplicative.

### ***Exclusion of Testimony***

In the event that any party or witness does not attend the hearing, or attends but refuses to participate in questioning by the parties' advisors, the statements of that party or witness, as the case may be, whether given during the investigation or during the hearing, will not be considered by the Hearing Chair and Hearing Panel in reaching a determination of responsibility. Notwithstanding the foregoing, where statements of a party are themselves the alleged Sexual Harassment (i.e., the case is about verbal or written quid pro quo or hostile environment harassment), then those statements will not be precluded from admission under this section.

In applying this section, neither the Hearing Chair nor the Hearing Panel will draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' Advisors.

### ***Timing and Continuances***

The Hearing Chair will have discretion to set the overall length of the hearing and may set time limits for statements of the parties, questioning of parties and witnesses, and closing arguments. A hearing will not exceed seven hours in length absent extraordinary circumstances. Once a hearing is commenced, it will be continued to another day only for good cause as determined by the Hearing Chair. The Hearing Chair has discretion to schedule breaks during the hearing.

### ***Advisor of Choice***

During the pre-hearing conference and hearing, the Complainant and Respondent will have the right to be accompanied by an Advisor of their choice. The Advisor may be, but is not required to be, an attorney.

Except for conducting the questioning of witnesses during the hearing, the Advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the Advisor, or communicate with the College about the matter. Advisors are not permitted to make objections, present arguments, or engage in any other active role apart from questioning of witnesses.

### ***Evidence of Sexual History***

During the hearing, evidence regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a



Complainant who affirmatively uses information otherwise considered irrelevant by this section may be deemed to have waived the protections of this section.

### ***Evidence of Privileged Communications***

During the hearing, the Hearing Chair and Hearing Panel are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use the following types of records unless the party holding the privilege has provided prior, written consent:

1. A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or
2. Information or records protected from disclosure by any other legally-recognized privilege, such as attorney-client privilege.

Notwithstanding the foregoing, a party who affirmatively uses information otherwise protected by this section may be deemed to have waived the protections of this section.

### ***Expectation of Professionalism and Prohibition on Disruptive Behavior***

All parties, Advisors, and other persons present at a hearing are required to act professionally, maintain decorum, and abide by the policy, these procedures, and any other rules specified by the Hearing Chair. The requirements of professionalism and decorum apply to all aspects of the hearing, including the manner in which questions are posed to parties and witnesses. Any party, Advisor, or other person who materially disrupts the proceeding or violates applicable policies, procedures, and rules, may be barred from further participation and/or have their participation limited, as the case may be, by the Hearing Chair.

### ***Nature and Rounds of Questioning***

Whenever these procedures contemplate questioning of a party or witnesses, the Hearing Chair has discretion to permit more than one round of questioning. In addition to ruling on questions of relevancy, the Hearing Chair may limit cumulative and redundant questioning.

### ***Deliberation***

After the hearing is complete, the Hearing Chair and Hearing Panel will deliberate over the matter. The deliberation will not be audio or video recorded. The deliberation will include an objective evaluation of all relevant evidence collected during their investigation, including both inculpatory and exculpatory evidence, together with testimonial and non-testimonial evidence received at the hearing. While deliberating, the Hearing Chair and Hearing Panel will ensure that any credibility determinations made are not based on a persons' status as a Complainant, Respondent, or witness. The Hearing Chair and Hearing Panel will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by other operation of these procedures. The Hearing Chair and Hearing Panel will resolve disputed facts using a preponderance of the evidence (i.e. "More likely than not") standard and reach a determination regarding whether facts that are supported by a preponderance of the evidence substantiate one or more of the allegations of Sexual Harassment in the Formal Complaint. In the deliberation, the Hearing Chair and each member of the Hearing Panel have one vote. Abstentions are not permitted. A majority vote controls.

#### ***Determination of Sanctions and Remedial Measures***

In the event the Hearing Chair and Hearing Panel determine that the Respondent was responsible for violating the Sexual Harassment Policy the Hearing Chair will, prior to issuing a written decision, consult with the appropriate administrator with disciplinary authority over the Respondent and such administrator will determine any discipline to be imposed. The Hearing Chair will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing supportive measures or other remedies will be provided to the Complainant.

#### ***Issuance of Written Decision***

After reaching a determination and consulting with the appropriate College administrator and Title IX Coordinator, the Hearing Chair will prepare a written decision that will include:

1. Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
2. A description of the procedural steps taken by the College upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, the date, location, and people who were present at or presented testimony at the hearing;

3. Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
4. A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
5. The discipline determined by the appropriate College administrator and any ongoing supportive measures or other remedies as determined by the Title IX Coordinator; and
6. A description of the College's process and grounds for appeal, as specified herein.

The written determination will be signed by the Hearing Chair on behalf of the Hearing Chair and Hearing Panel. The written determination will then be transmitted by the Title IX Coordinator, to the parties and other College officials, as appropriate. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal. In a typical case, the written determination will be transmitted within fourteen (14) days of completion of the hearing, but this time period may vary depending on a range of factors including the complexity of the allegations at issue.

### ***Appeal***

Either party may appeal the dismissal of a Formal Complaint by the Hearing Chair or written determination of the Hearing Panel, as the case may be, as outlined in the Appeals Procedure section of this Policy.

The written determination of a Formal Complaint becomes final when the time for the appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the College has resolved all appeals, either by dismissal or by transmittal of a written decision from the President or designee. No further review or appeal is permitted beyond the appeal to the President or designee as specified below.

### ***Objections Generally***

Parties are expected to raise any objections, concerns, or complaints about the processes specified herein in a prompt and timely manner so that the College may evaluate the matter and address it, if appropriate. The failure of a party to timely raise an objection, concern, or complaint may result in a waiver of the issue.

### ***Recordings***

Only the College may make a recording of the hearing and it is considered property of the College, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated by these procedures is prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the Hearing Chair.

### ***False Information***

It is a violation of these procedures for any person to provide testimony or other evidence that the person knows to be false or in bad faith.

### ***Discretion in Application***

The College retains discretion to interpret and apply these procedures in a manner that is not clearly unreasonable, even if the College's interpretation or application differs from the interpretation of the parties.

Despite the College's reasonable efforts to anticipate all eventualities in drafting these procedures, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the College retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

These procedures are not contractual in nature. Accordingly, the College retains discretion to revise these procedures at any time, and for any reason. The College may apply revisions to an active case provided that doing so is not clearly unreasonable.

## **Appeals Procedure**

In Title IX Sexual Harassment proceedings, the following positions shall fulfill the role of Appeal Administrator. The Dean of Student Services will review and decide on any appeal submitted to the Title IX Coordinator by a student and the President will review and decide any other appeals submitted to the Title IX Coordinator. If the Dean of Student Services is a Respondent, then the President will be the Appeal Administrator. If the President is a Respondent, then the Title IX Coordinator shall designate an Appeal Administrator.

During the appeal process, the Appeal Administrator will not conduct a new investigation of the Formal Complaint or substitute their judgment for that of the Hearing Panel. Rather, on appeal, the appellant must show error in one or more of the following ways and that error caused actual prejudice to the outcome of the investigation:

1. A procedural irregularity affected the outcome;

2. There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
3. The Title IX Coordinator, Investigator, Hearing Chair, or Hearing Panel, as the case may be, had a conflict of interest or bias for or against Complainants or Respondents generally, or against the individual Complainant or Respondent, that affected the outcome;
4. The party was deprived of a right guaranteed by some other College policy or standard and the deprivation of that right affected the outcome.

No other grounds for appeal are permitted.

A party must file an appeal within ten (10) days of the date they receive notice of dismissal or written determination. The appeal must be submitted in writing to the Title IX Coordinator. Upon receipt, the Title IX Coordinator shall provide the appeal to the appropriate Appeal Administrator.

If an appeal is untimely or fails to invoke one or more of the permitted grounds for appeal, it will be dismissed.

If a timely appeal is filed invoking one or more of the permitted grounds, it shall be processed and heard in the manner specified in this policy.

As an initial matter, the Appeal Administrator shall notify the non-appealing party of the appeal. The non-appealing party may submit a written response to the appeal within ten (10) days of that notification. The Title IX Coordinator may be asked to submit a response or to provide additional information regarding the case.

The Appeal Administrator may only decide whether the appealing party has demonstrated, by a preponderance of the evidence, that one of the above grounds for appeal has been satisfied. Within thirty (30) days of both parties having the opportunity to submit written materials regarding the appeal to the Title IX Coordinator, the Appeal Administrator shall issue a written decision to both parties and their advisors that describes the appeal and announces a decision and rationale. The Appeal Administrator's ruling is final and not subject to further review within the College.

### **Time Consumed by the Investigation**

It serves all parties when investigations proceed diligently and conclude within a reasonable time, which may vary case by case. Not more frequently than every other week, any party may request the Title IX Coordinator to obtain and provide the parties with a basic status report on the investigator's progress toward completion.

### **Informal Resolution**

After a Formal Complaint has been filed and at any time prior to reaching a determination of responsibility, the College may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. If a party requests the use of an informal resolution process, the College will provide the parties a written notice that:

1. Discloses the allegations and the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;
2. Discloses that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint;
3. Discloses any consequences resulting from participating in the informal resolution process, including the records that, with voluntary written consent from the parties, will be maintained or could be shared; and
4. Obtains the parties' voluntary, written consent to the informal resolution process.

The informal resolution process may not be used to resolve allegations that an employee sexually harassed a student.

If the informal resolution process does not resolve the Formal Complaint within thirty (30) business days after both parties consented to use the process, the Title IX Coordinator will resume the grievance process unless both parties again consent to continue using the informal resolution process.

## **Training**

The Title IX Coordinator, investigators, Hearing Chairs, Hearing Panel members, Appeal Administrators, and any person designated to facilitate an informal resolution process, should the College offer one, will receive training on the following:

1. The definition of sexual harassment under Title IX as used in this policy;
2. The scope of the College's education program and activities;
3. How to conduct the investigation and grievance process, including determination of responsibility for sexual harassment, appeals, and informal resolution processes, as applicable;
4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
5. Issues of relevance necessary to create an Investigative Report that fairly summarizes the relevant evidence; and
6. Issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

The College will not use training materials that rely on sex stereotypes. All training materials used by the College will promote impartial investigations and adjudications of Formal Complaints of sexual harassment under Title IX. These training materials must be publicly available on the College's website and upon request.

## **Records**

The College will maintain the following records for seven (7) years:

1. Records of each investigation of sexual harassment under Title IX, including any determination of responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom;
4. All materials used to train Title IX Coordinator, investigators, Hearing Chairs, Hearing Panel members, Appeal Administrators, and any person designated to facilitate an informal resolution process;
5. Documentation if the College did not provide a Complainant with supportive measures and the reasons why such a response was not clearly unreasonable in light of the known circumstances; and
6. Records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment under Title IX. These records must document the basis for the conclusion and that the College's response was not deliberately indifferent.

The College may add documentation of additional steps taken by the College that were not initially provided in conjunction with the initial complaint filed.

## **Confidentiality**

Except as required by law, as permitted by the FERPA, or to carry out the purposes of Title IX, including the conduct of any investigation, hearings, or judicial proceeding arising thereunder, the College will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including:

1. Any individual who has made a report or filed a Formal Complaint of sexual harassment under Title IX;
2. Any Complainant;
3. Any individual who has been reported to be the perpetrator of sex discrimination;
4. Any Respondent; and
5. Any witness.

The College must maintain as confidential any supportive measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## Definitions Applicable to this Policy

The following definitions are intended for use only for the purposes of this policy:

*Actual Knowledge* – Notice of sexual harassment under Title IX or notice of allegations of sexual harassment under Title IX to the College's Title IX Coordinator or to any College official who has the authority to institute corrective measures on behalf of the College.

*Business Days* – Days on which the College's business offices are open.

*Complainant* – An individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. A Title IX Coordinator who signs a Formal Complaint is not considered a Complainant.

*Dating Violence* – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

*Determination of Responsibility* – A formal finding of the Hearing Panel on each allegation of sexual harassment contained in a Formal Complaint that the Respondent did or did not engage in conduct constituting sexual harassment under Title IX based on a preponderance of the evidence.

*Domestic Violence* – Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Kansas; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Kansas.

*Education Program or Activity* – Any part of the College-sponsored instruction or employment in the College, including locations, events or circumstances over which the College exercises substantial control over both the Respondent and the context in which the sexual harassment occurred.

*Formal Complaint* – A document or electronic submission filed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment under Title IX against a Respondent and requesting that the College investigate the allegations. When a Complainant files a Formal Complaint, the document or electronic submission must have the Complainant's physical or digital signature or otherwise indicate the Complainant's identity. A Formal Complaint may be filed only by a Complainant participating in or attempting to participate in the College's education programs or activities.



*Informal Resolution Process* – Alternative dispute resolution methods designed to resolve allegations of sexual harassment without completing the Formal Complaint process. The purpose of the process is to restore or preserve equal access to the College's education programs or activities for all parties.

*Investigative Report* – The report of the investigator of a Formal Complaint.

*Party/Parties* – Complainant(s) and Respondent(s).

*Remedies* – Upon a final determination of responsibility, remedies are actions taken to restore or preserve equal access to the College's education programs or activities. These may include continued or new supportive measures but may also include imposition of more burdensome requirements, limitations and conditions upon the Respondent, as well as disciplinary referral of the Respondent, including suspension, termination or expulsion.

*Report* – Information provided by a Complainant or any other person to the Title IX Coordinator when that information indicates, suggests or alleges misconduct. This includes the intake information obtained by the Title IX Coordinator prior to the filing of a Formal Complaint.

*Respondent* – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.

*Sexual Assault* – This includes all behaviors constituting forcible or nonforcible sexual offenses within the scope of the Federal Bureau of Investigation's national uniform criminal incident reporting system. At present these classifications include any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of consent. Sexual assault specifically includes:

1. *Rape* (Except Statutory Rape) – The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
2. *Sodomy* – Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
3. *Sexual Assault with an Object* – To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
4. *Fondling* – The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his or

her age or because of his or her temporary or permanent mental or physical incapacity.

5. *Incest* – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Kansas law.
6. *Statutory Rape* – Nonforcible sexual intercourse with a person who is under the statutory age of consent pursuant to Kansas law.

*Stalking* – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

*Supportive Measures* – Nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, safety escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

*Title IX Decision* – The comprehensive decisional document of the Hearing Panel concluding the Grievance Process, as may be amended or affected by the results of an appeal.

*Voluntary Consent* – Consent given freely and without coercion.