

College Procedure:	500.10 – Sexual Misconduct
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Reason for Procedure

Kirkwood Community College prohibits sex discrimination, including sexual harassment.

The Procedure

I. The Preamble

In accordance with Title IX of the Education Amendments Act of 1972, Kirkwood Community College prohibits sex discrimination, including sexual harassment, as defined in Section II. The College will utilize these procedures to respond to claims of sexual harassment and will not proceed under any other College policy or procedure if doing so would interfere with any right or privilege provided to a party under Title IX. If the College determines that a report or complaint does not constitute a violation of Title IX, it may still proceed to investigate or respond to that report or complaint under any other applicable College policy or procedure.

II. Definitions

A. Sexual harassment means unwelcome behavior (verbal, written, physical) that is directed at someone because of that person's sex or gender, and that meets any of the following definitions:

1. **"Quid Pro Quo" Harassment.** A College employee, agent, or other individual under the College's control or authority explicitly or implicitly conditions an educational decision or benefit on submission to sexual conduct (e.g., sexual favors for a better grade, more playing time; threatening (explicitly or implicitly) negative consequences if the student or employee rejects sexual advances).
2. **Hostile Educational/Work Environment.** Unwelcome conduct that creates a hostile, intimidating or demeaning environment that is sufficiently severe, pervasive, and objectively offensive that it effectively denies a person equal access to participation in the College's educational program or activity. Examples can include persistent and unwelcome efforts to

develop a sexual relationship; bullying/cyber-bullying of a sexual nature or for a sexual purpose; sexual exploitation (defined below); unwelcome commentary about an individual's body or sexual activities; unwanted sexual attention; repeated and unwelcome sexually-oriented teasing, joking or flirting; verbal abuse of a sexual nature. Behavior could be verbal, non-verbal (e.g., gestures, touching), written or electronic.

3. **Sexual Assault.** An offense that meets the definition any one of the following offenses:
 - Rape: the 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 consent of the victim;
 - Fondling: the touching of the private body parts of another person for the purpose of sexual gratification without consent of the victim;
 - Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
 - Statutory rape: sexual intercourse with a person who is under the statutory age of consent.

4. **Stalking.** Purposefully engaging in a course of conduct directed at a specific person ("target") that would cause a reasonable person to fear bodily injury to, or the death of, the target or a member of the target's immediate family when:
 - when the person ("stalker") knows or should know that the target will be placed in reasonable fear of bodily injury to, or the death of, the target or a member of the target's immediate family by the course of conduct; and
 - the stalker's course of conduct induces fear in the target of bodily injury to, or the death of, the target or a member of the target's immediate family.

5. **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 a consideration of:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the relationship.

6. **Domestic Violence.** Any action that may constitute a felony or misdemeanor crime 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 cohabiting with, or has cohabited 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 the State of Iowa; 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 the State of Iowa.

- Determination as to whether the alleged conduct constitutes sexual harassment should take into consideration all of the circumstances, including the context in which the alleged incidents occurred.

B. Consent and Incapacitation. Sexual assault, as defined above, occurs when physical sexual activity is engaged in without the consent of the other person or when the other person is unable to consent to the activity due to incapacitation.

Consent means words or clear, unambiguous actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity.

- Consent is voluntary. It must be given without coercion, force, threats, or intimidation.
- Consent is affirmative. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Silence or the absence of resistance does not equate to consent.
- Consent is clear. If confusion or uncertainty on the issue of consent arises anytime during the sexual interaction, the sexual activity should cease.
- Consent is revocable. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity—every time. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.
- Consent cannot be given when a person is incapacitated.
- Being intoxicated by drugs or alcohol oneself does not diminish the responsibility to obtain consent from the other party.

Incapacitation means the inability (temporarily or permanently) to give consent because the individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring.

- The factors to be considered when determining whether consent was given include whether the accused knew, or whether a reasonable person should have known, that the complainant was incapacitated.

C. Sexual exploitation involves taking sexual advantage of another person, even though the behavior might not constitute sexual assault, where the conduct creates a hostile educational or employment environment for the target of the conduct or otherwise falls within the definition of "sexual harassment" above. Examples can include, but are not limited to:

- Distribution or publication of sexual or intimate information about another person without consent.
- Electronic recording, photographing, or transmitting sexual or intimate utterances, sounds, or images without knowledge and consent of all parties.
- Engaging in indecent exposure.

- Sexual intimidation, which is an implied or actual threat to commit a sex act against another person, or behavior used to coerce participation in a sex act, when no sex act actually occurs.
- Voyeurism, which involves both secretive observation of another's sexual activity or secretive observation of another for personal sexual pleasure.

D. Employees include all full and part time employees working for the College in any capacity.

E. Student includes all persons taking courses at Kirkwood Community College, either full-time or part-time, pursuing degree or non-degree programs including continuing education and distance courses. Persons who withdraw after allegedly violating the Student Code, who are not officially enrolled for a particular term but who have a continuing relationship with the College, or who have been notified of their acceptance for admission are also considered "students," although not enrolled in this institution.

F. Complainant means any person who alleges that they have been subjected to sexual harassment as defined by these procedures. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the College's programs or activities.

G. Respondent means any person who has been reported to be the perpetrator of conduct that could constitute sexual harassment under these procedures, and over whom the College is able to exercise substantial control.

H. Investigators mean the individuals designated by the College to conduct investigations of alleged sexual misconduct. Under no circumstances will an Investigator serve as a member of the Sexual Misconduct Board or Appeal Decision-Maker for the same case.

I. Sexual Misconduct Board means the group of faculty, staff, and administrators appointed by the College to hear complaints of sexual misconduct and act as the initial decision-makers, and who are trained to do so. No member of the Sexual Misconduct Board shall be the Title IX Coordinator, Title IX Investigator, or Appeal Decision-Maker.

III. Scope

This procedure applies to all persons participating in the programs or activities of Kirkwood Community College, including students and employees of the College, as defined in Section II, and in particular students or employees who:

- Are victims of any form of sexual harassment (as defined in Section II), by any other person (student, employee, or others outside the College community).
- Are accused of engaging in behavior prohibited by these procedures.

The College has jurisdiction over locations, events or circumstances over which it substantially controls the Respondent and the context in which the harassment occurs, including any building owned or controlled by a student organization that is officially recognized by the College. The College's jurisdiction is limited to conduct against a person that occurs in the United States.

Any person may file a complaint alleging sexual misconduct against a student or employee of the College. However, with respect to any complaint that is 1) by a person who is not a member of the College community, and 2) relating to conduct occurring outside the College's program or activity, the College reserves the right to determine, in its sole discretion, whether the conduct described in the complaint bears a sufficient nexus to the educational program or employment relationship of a Kirkwood student or employee or constitutes a sufficient risk to the College community to proceed under these procedures.

IV. Confidentiality

Kirkwood is committed to creating an environment that encourages individuals to come forward if they have experienced any form of sexual misconduct. The College will work to safeguard the identities and privacy of individuals who seek help or who report sexual misconduct. However, it is important that individuals understand the limits on confidentiality of individuals whom they may contact for such assistance. Different people, depending on their positions, have different obligations with regard to confidentiality.

The College will keep confidential the identity of any individual who has made a report or complaint of sex discrimination or sexual harassment, or has been identified as the perpetrator or respondent to any such report or complaint, or is a witness to any complaint or investigation, **except** as required to carry out the purposes of these procedures (including the conduct of any investigation, hearing, or judicial proceeding), applicable law, or as permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.

Under Iowa law, communications with some individuals are confidential. Anyone who wants to maintain confidentiality should always confirm whether confidentiality applies to the communication before they make the communication. Generally, confidentiality applies when an individual seeks services from the following persons:

- Trained and statutorily certified victim's advocate (this includes advocates working from the Riverview Center or Waypoint Services). See Section VII.A. Confidential Advocacy and Support.
- Licensed Psychological counselor (including counselors from Kirkwood Counseling Services)
- Licensed Healthcare provider
- Personal attorney representing the complainant, respondent, and/or other participants
- Religious/spiritual counselor

Any other College employee cannot guarantee complete confidentiality. However, information is disclosed only to select officials who have an essential need to know in order to carry out their job responsibilities. As is the case with any educational institution, the College must balance the needs of the individual with its obligation to protect the safety and well-being of the community at large. Therefore, depending on the seriousness of the alleged incident, further action may be necessary, including a Timely Warning Notice, where required by the Clery Act. The notice would not contain any information identifying the individual who brought the complaint.

V. Reporting Sexual Misconduct

Contacting Police or Kirkwood Public Safety does not mean a Complainant must pursue charges. Kirkwood Public Safety and local law enforcement can advise individuals of their options and can also preserve evidence while the person considers her/his options.

A. Reporting to Law Enforcement

Because sexual misconduct may constitute both a violation of college policy and criminal activity, the college strongly encourages, but does not require, students to report concerns of sexual misconduct to law enforcement as soon as possible after the incident. A Complainant may proceed under these procedures whether or not they elect to report to law enforcement as well.

For emergencies, contact 9-1-1.

To contact law enforcement in non-emergency situations, call the non-emergency number for your local police department.

B. Reporting to Kirkwood

To seek assistance and support, or to report misconduct in non-emergency situations, contact the Dean of Students Office, 2nd Floor Kirkwood Hall, 319-398-5540 or Public Safety, 319-398-7777. Other reporting options include:

- Submitting a Silent Witness
Report: <https://www.kirkwood.edu/site/index.php?p=16760>
- Contacting Title IX Coordinator, Jon Buse, Vice President for Student Services, 319-398-4977, 351 Benton Hall,
Jon.Buse@kirkwood.edu
- Contacting a Deputy Title IX Coordinator:
 - Bobbi Miller, Associate Dean of Students, 319-398-7798, bobbi.miller@kirkwood.edu
 - Andrew MacPherson, Associate Vice President, Facilities/Security 319-398-5669, andrew.macpherson@kirkwood.edu
 - Melissa Payne, Executive Dean of Students, 319-398-5584, melissa.payne@kirkwood.edu
 - Wes Fowler, Vice President of Human Resources, 319-398-7797, wes.fowler@kirkwood.edu

C. Amnesty for Complainants and Participants in Investigations

The College will not pursue disciplinary action for improper use of alcohol or other drugs against a student who reports in good faith an incident of sexual misconduct, or who participates in good faith in an investigation into an incident of sexual misconduct.

D. Retaliation Prohibited

Retaliation against a person who reports sexual misconduct, assists someone with a report of sexual misconduct, or participates in any manner in an investigation or resolution of a sexual misconduct report is strictly prohibited. Retaliation includes threats, coercion, discrimination, intimidation, reprisals, and/or adverse actions related to employment or education.

These procedures' anti-retaliation protections do not apply to any individual who makes a materially false statement in bad faith in the course of any complaint, investigation, hearing, or other proceeding under these procedures. However, a determination that an individual made a materially false statement in bad faith must be supported by some evidence other than the determination of whether the Respondent violated these procedures alone.

E. Time Frames for Reporting and Response

The College strongly encourages prompt reporting of complaints and information. While there is no time limit in invoking these procedures in responding to complaints of alleged sexual misconduct, a complaint should be submitted as soon as possible after the event takes place.

Individuals are encouraged to report sexual misconduct immediately in order to maximize the College's ability to respond promptly and equitably. The College will not be able to investigate a formal complaint against an individual who is no longer affiliated with the College. Under those circumstances, the College will still consider whether it can offer supportive measures to the Complainant or proceed under another applicable College policy, procedure, handbook provision, or rule.

In all cases, the College will conduct a prompt and equitable investigation of allegations of sexual misconduct. Generally, the College will attempt to complete the process within 60 days. However, the time frames set forth in these procedures are meant to provide guidance, and the College may, as appropriate, alter or extend time frames for good cause, with notice to the parties. The time it takes to complete the resolution of a sexual misconduct complaint may vary based on the complexity of the investigation and the severity and extent of the alleged conduct, as well as on whether there is a parallel criminal investigation, or if school breaks occur during the process.

VI. Process for Responding to Reports of Sexual Misconduct

A. Initial Steps

1. Initial Meeting with the Complainant

Upon receipt of any report of sexual harassment occurring in the College's program or activity, as defined in Section II above, the Title IX Coordinator or designee will first schedule a meeting with the Complainant to provide the Complainant with information about these procedures to discuss supportive measures available to the Complainant with or without the filing of a formal complaint, and to explain the process for filing a formal complaint.

If the Complainant would like assistance throughout any College investigation or adjudication process, the Dean of Students Office will make a student services staff member available to a complainant who is a student. Employees who would like assistance during a Title IX investigation should contact Kirkwood Human Resources. This staff member is not an "advocate" as that term is used below (see Article VII, A, Confidential Advocacy and Support), nor is that staff person a representative who will speak on behalf of the Complainant in any investigatory or adjudication process. Rather, the staff member serves as a point of contact to answer questions and explain processes, to make sure the Complainant's expressed needs are being addressed, and to join the Complainant in meetings if requested. The College also will offer the same resource to Respondents.

At the initial intake meeting with the Complainant, the Title IX Coordinator or designee will seek to determine how the Complainant wishes to proceed. The Complainant may opt for: (1) formal resolution (see section B, below); (2) informal resolution (see section C, below); or (3) not proceeding.

2. Formal Complaint

If the Complainant wishes to proceed with either formal or informal resolution, a written document must be filed by the Complainant or signed by the Title IX coordinator alleging harassment against a respondent. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not the complainant or otherwise a party to a complaint proceeding under these procedures.

B. Formal Resolution

A Complainant may elect to pursue a formal resolution, which involves a hearing before the Sexual Misconduct Board, which is described more specifically in this section.

1. Equitable Treatment

As set forth in more detail below, the College will treat Complainants and Respondents equitably throughout the formal resolution process.

2. Consolidation of Complaints

The College may consolidate formal complaints of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, where the allegations arise out of the same facts or circumstances.

3. Required Notices

Notice of Investigation. If a Complainant elects to pursue a formal complaint, the Title IX Coordinator or designee will provide a written Notice of Investigation simultaneously to both parties notifying the parties of:

- the identities of the parties involved in the incident;
- the conduct alleged;
- the date and location of the incident;
- Respondent's entitlement to a presumption of innocence;
- The parties' rights to have an advisor of their choice at the party's expense, who may be an attorney; and
- The parties' rights to review and comment on investigative evidence.

The written notice of investigation shall notify the parties that making false statements or knowingly submitting false information during the grievance process is prohibited by the College and may constitute an independent basis for disciplinary sanctions against any student or employee, up to and including suspension or expulsion of a student or termination of an employee's employment.

The notice shall be provided prior to the initial interview of any party.

If, during the course of investigation, the College determines that additional allegations will be investigated as part of the pending complaint, the Title IX Coordinator or designee will provide written notice of the additional allegations to any identified Complainant(s) or Respondent(s).

Notice of Interviews, Hearings, or Other Meetings. Parties will be provided written notice of the date, time, location, participants, and purpose of any interview, hearing, or meeting with sufficient time for the party to prepare.

4. Dismissal

The College shall dismiss any formal complaint made under these procedures if at any time it determines that it lacks jurisdiction under Title IX because the conduct alleged in the formal complaint:

- Would not constitute sexual harassment as defined in Section II of these procedures even if proved;
- Did not occur in the College's education program or activity; or
- Did not occur against a person in the United States.

The College, in its sole discretion, may dismiss any formal complaint under these procedures if at any time:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations;
- The Respondent is no longer enrolled or employed by the College; or
- Specific circumstances exist that prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations. Examples include, but are not limited to, a significant passage of time from the date of the allegation(s) in the complaint to the date the complaint is filed that makes investigation impracticable or where the Complainant has stopped participating in the process.

Dismissal of a complaint from proceeding under these procedures does not preclude the College from offering supportive measures to any party or from proceeding under any other applicable code of conduct, policy, or procedures applicable to students and/or employees of the College.

Upon dismissal of any formal complaint under this section, written notice of this dismissal and the reason(s) therefore will be provided simultaneously to Complainant and Respondent.

5. Investigation

The College shall provide an investigator who is impartial and unbiased and does not have a conflict of interest in the present case to serve as the Investigator of a formal complaint filed under these procedures. The investigator(s) may be a College administrator or someone retained by the College, such as an attorney, mental health professional, or another person trained to conduct investigations of sexual misconduct. The investigators serve as neutral fact-finders, who during the course of the investigation, typically conduct interviews with the Complainant, the Respondent, and each third-party witness; gather evidence relevant to the

complaint, including site visits or photographs at each relevant site where appropriate; and where applicable, coordinate with law enforcement agencies to collect and preserve relevant evidence.

The burden of proof and the burden of gathering sufficient evidence to reach a determination of responsibility rests with the College and not with the parties. Both parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other evidence (both inculpatory and exculpatory) to the Investigator. Neither party will be restricted in their ability to discuss the allegations or to gather and present relevant evidence; provided, however, that such communications shall not constitute harassment of or retaliation against any party.

The Investigator will evaluate all relevant evidence, both inculpatory and exculpatory, and will not make credibility determinations based solely on a person's status as complainant, respondent or witness.

The Investigator will only access, consider, disclose, or otherwise use a party's treatment records made or maintained by a health care provider, or other records protected under a legally recognized privilege, if the party provides the Investigator with voluntary, written consent to do so.

Prior to completion of the Investigative Report, the Investigator will provide each party and the party's advisor, if any, copies of any evidence obtained by the Investigator that is directly related to the allegations in the complaint. Both parties will have ten (10) calendar days to submit a written response to the evidence to the Investigator. The College may require both parties and their advisors to enter into a written agreement prohibiting the use or dissemination of evidence for any purpose other than those directly related to the parties' participation in the Title IX grievance process.

6. Investigative Report

After conducting the investigation, the investigator(s) will complete an investigative report that includes:

- Summaries of interviews with the Complainant, the Respondent, and each third-party witness; photographs of relevant sites and related logs; electronic and forensic evidence; and a detailed written analysis of the events in question;
- A statement of all undisputed material facts; and
- A statement of all disputed material facts, including a summary of the evidence supporting each position.

The investigative report will be distributed, concurrently, to both of the parties and the Title IX Coordinator at least ten (10) calendar days prior to a hearing to determine responsibility under these procedures.

7. Complainant Changes Election to Informal Resolution or Respondent Elects to Accept Responsibility.

After reviewing the investigative report but prior to any determination of responsibility, the Complainant may decide to elect Informal Resolution instead of formal resolution, by making

such a request to the Title IX Coordinator or designee prior to the hearing date. Informal Resolution will be conducted in accordance with Section C, below.

At any point prior to the hearing, the Respondent may elect to admit responsibility for the alleged sexual misconduct. In such cases where the Respondent voluntarily admits responsibility prior, the Title IX Coordinator or designee will propose a resolution to the complaint and a sanction. If both the Complainant and the Respondent agree to the proposed resolution and sanction, the complaint is resolved without a hearing and without any further rights of appeal by either party. If either the Complainant or the Respondent objects to the proposed sanction, a hearing before the Sexual Misconduct Board will be convened for the sole purpose of determining an appropriate sanction based on the conduct to which Respondent admitted, and in these cases, the decision of the Board may be appealed pursuant to paragraph 15, "Appeals," below. For purposes of this sanction hearing, all of the other provisions of these procedures relating to the imposition of a sanction for Sexual Misconduct will apply.

8. Advisors

The Complainant and the Respondent may have an advisor present to assist them during the pre-hearing, hearing, and appeal stages of the complaint process. The advisor may be an attorney chosen at the party's expense. However, advisors are not permitted to speak or to participate directly in the process, with the exception of conducting cross-examination during any hearing before the Sexual Misconduct Board. Parties should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing because delays will not normally be allowed due to the scheduling conflicts of an advisor.

9. Notice of Hearing and Pre-Hearing Meetings.

If a hearing is scheduled, the Title IX Coordinator or designee will provide written notice to both parties of the time, date, location, anticipated participants, and purpose of the hearing with sufficient time for the parties to prepare for the hearing. In addition, the Title IX Coordinator or designee will schedule separate meetings with the Complainant and the Respondent to review the hearing procedures.

10. Conduct of the Hearing

Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in these proceedings.

Hearings will be conducted in private.

The Sexual Misconduct Board chairperson and three members of the Sexual Misconduct Board will be appointed by the Dean of Students to serve on the Sexual Misconduct Board.

The Sexual Misconduct Board chairperson may be a college employee or someone retained by the College, such as an attorney, mental health professional, or another person trained to conduct sexual misconduct hearings.

The complainant, respondent, and their advisors, if any, will be allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the hearing will be at the discretion of the chairperson of the Board.

The complainant and respondent have the right to challenge any member of the Sexual Misconduct Board on grounds of prejudice. This challenge, with the reasons for the challenge, must be submitted in writing to the Dean of Students at least two (2) business days prior to the hearing. The Dean of Students or designee will determine if the member will sit on the case. If the challenge is upheld, the Dean of Students or designee will select another Sexual Misconduct Committee member for the Sexual Misconduct Board.

The complainant, the respondent, and the Sexual Misconduct Board may arrange for witnesses to present pertinent information to the Board. The college will try to arrange the attendance of possible witnesses who are members of the college community, if reasonably possible, and who are identified by the complainant and/or the respondent at least two (2) business days prior to the hearing. Witnesses will provide information to and answer questions from the Board and will be subject to cross-examination.

The Sexual Misconduct Board will not require, allow, rely upon, or otherwise use questions or evidence that constitutes or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Each party may be represented during the live hearing by an advisor of their choice at their own expense, who may be an attorney. If a party does not have an advisor, an advisor of the College's choice will be provided to conduct cross-examination.

Each party's advisor shall be permitted to conduct cross-examination of the other party and any witnesses, including all relevant questions and follow-up questions, including those challenging the credibility of the party or witness. Cross-examination will be conducted directly, orally, and in real time during the hearing. Under no circumstances will any party be allowed to conduct cross-examination personally.

The Chair will determine the relevance of any cross-examination question before it is answered. Questions or evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant and shall be excluded, other than to establish that someone other than the Respondent committed the conduct alleged by Complainant, or if the questions concern specific incidents between Complainant and Respondent and are offered to provide consent.

The Sexual Misconduct Board will not draw an inference about responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

All procedural questions, including the decision to accept evidence and/or statements, will be made by the Sexual Misconduct Board Chair, in their sole discretion.

A recording (audio or video) or written transcript will be made of the hearing and will be available to the parties for inspection and review.

At the request of either party, the hearing will be conducted with parties in separate rooms with technology enabling the decision-makers and parties to simultaneously see and hear the witness answering questions.

After the portion of the hearing concludes in which all pertinent information has been received, the Sexual Misconduct Board, excluding the Board Chairperson, will determine by majority vote whether the Respondent has violated each section of these procedures for which the person is charged with violating.

11. Standard of Proof

The determination of whether or not a violation of these procedures occurred will be made on the basis of whether it is more likely than not that the Respondent violated these procedures. This standard is more formally referred to as the "preponderance of evidence" standard. In making its determination, the Board will carefully consider all of the evidence presented and follow the procedures stated in these procedures and any other applicable College policies, procedures, rules, or handbook provisions in order to ensure as fair a hearing as possible for all parties.

12. Sanction

Sanctions and remedies will be determined on a case-by-case basis by the Sexual Misconduct Board. Sanctions may range from a written warning to suspension or expulsion of a student or termination of an employee's employment with the College. The Sexual Misconduct Board is required to consider the suspension or expulsion of any student or the recommendation to terminate any employee's employment, if that individual is found responsible for sexual assault; however, the Sexual Misconduct Board may impose or recommend, where applicable, any sanction that it finds to be fair and proportionate to the violation. Students will be sanctioned in accordance with Article IV, B, of the Student Conduct Code. Student sanctions may include, but are not limited to: Warning, probation, deferred suspension, suspension, withdrawal of an offer of admission, revocation or withholding of a degree, loss of privileges, delayed registration, and other discretionary sanctions, such as work assignments, service, mental health or substance abuse evaluation and/or treatment.

Employee discipline following a determination by the Sexual Misconduct Board of a violation under this procedure will be determined in compliance with applicable law and Kirkwood policies and procedures, up to and including termination of employment.

13. Written Decision

Within ten (10) business days of completion of the hearing, the Dean of Students will notify the Complainant and accused student of the decision and any sanctions imposed.

Following the conclusion of the hearing, Board Chair will notify the Title IX Coordinator or designee of the decision and any sanctions imposed or recommended in writing within five (5) business days of completion of the hearing. Within ten (10) business days of completing the hearing, the Sexual Misconduct Board Chair will issue a written determination regarding

responsibility, which shall be determined by a preponderance of the evidence. The written determination will include:

- Identification of the allegations;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including notifications to the parties, interviews, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact;
- Conclusions regarding the application of the College's code of conduct to the facts;
- A statement of and rationale for the decision-maker(s) determination regarding responsibility for each allegation;
- A statement of and rationale for any disciplinary sanctions that will be imposed on Respondent, if applicable;
- A statement of and rationale for any remedies the College will provide to restore or preserve Complainant's access to the College's program or activity, if applicable; and
- A statement of the College's appeal procedures.

The Title IX Coordinator or designee will provide the written determination to the parties simultaneously. The decision shall be final five (5) business days after delivery of the written determination, if no appeal is filed.

14. Appeals

Within five (5) business days of delivery of the written decision to them, either party may appeal the dismissal of a formal complaint, or the Board's decision and/or the sanction imposed to the President of the College or designee. Such appeals will be in writing and will be delivered to the Title IX Coordinator or designee. Appeals must allege one of the following:

- A procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding dismissal or responsibility was made, that could affect the outcome of the matter; or
- The Title IX Coordinator, Investigator(s), or Hearing Panel had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The Title IX Coordinator or designee will notify both parties in writing if an appeal is received alleging one of the bases for appeal above. Both parties will be given an opportunity to submit a written statement in support of, or challenging, the written determination. Written statements must be submitted to the President or designee within five (5) business days of receiving notification that an appeal was filed.

The President or designee will determine if the decision and/or sanctions imposed will be stayed pending the outcome of the appellate decision.

Except as required to explain the basis of new information, an appeal will be limited to a review of the verbatim record of the hearing and supporting documents.

The President or designee may affirm, reverse, or modify the decision regarding the violation and/or sanctions imposed. A written decision will be issued simultaneously to the parties

describing the result of the appeal and the rationale therefor. The written appeal decision of the President or designee is the final decision of the College, and no further appeals are permitted under these procedures.

All parties will be informed of the results of the appeal decision as promptly as possible.

C. Informal Resolution

Upon filing of a formal complaint, a Complainant may request a less formal proceeding known as "Informal Resolution." Although less formal than formal resolution, Informal Resolution is not mediation. Informal resolution is available to the parties any time prior to a determination of responsibility made by the Sexual Misconduct Board.

1. Election of Informal Resolution

The Title IX Coordinator will assess the severity of the alleged harassment and the potential risk of a hostile environment for others in the community to determine whether informal resolution may be appropriate. Informal Resolution will not be available to resolve allegations involving an employee sexually harassing a student.

The College will not require the parties to participate in the Informal Resolution process as a condition of enrollment, continuing enrollment, or employment or continuing employment, or of any other right conferred by the College.

The Title IX Coordinator will provide the parties with a written notice setting forth the allegations, the requirements of the informal resolution process set forth in these procedures, the right of any party to withdraw from the informal process and proceed with the formal grievance process in Section B, above, at any time prior to agreeing to a resolution; and any consequences resulting from the participation in the informal process, including the records that will be maintained or could be shared by the College. Both parties must voluntarily consent in writing to participation in the informal resolution process.

2. Information Gathering and Resolution Process

Upon receipt of voluntary written consent from both parties, the Title IX Coordinator will assign the informal resolution to an Investigator. The Investigator will consult separately with the Complainant and Respondent and gather additional relevant information as necessary from the parties and others, as indicated.

The Title IX Coordinator also may put in place any appropriate supportive measures to protect the educational and/or work environment of the parties. Supportive measures must be individualized and designed to protect the safety of all parties and deter sexual harassment. Supportive measures are non-disciplinary and no inference of responsibility under these procedures should be drawn from the implementation of any supportive measures by the Title IX Coordinator.

The Title IX Coordinator or the Investigator will attempt to aid the parties in finding a mutually acceptable resolution to the complaint. This resolution will be reduced to writing and must be signed by the Complainant and the Respondent. Once both parties have voluntarily signed the

written resolution, the written resolution becomes final and neither party can initiate the formal grievance process to resolve the allegations in the formal complaint. The written resolution is not subject to appeal.

3. Advisors

The Complainant and the Respondent each may be assisted by an advisor throughout the Informal Resolution process. Advisors are assigned and subject to the same restrictions set forth for advisors in Formal Resolution (outlined above).

4. Election of Formal Resolution

Either party may, at any time prior to signing an informal resolution agreement, elect to end the informal resolution process and initiate formal resolution instead. In such cases, statements or disclosures made by the parties in the course of the informal resolution will not be considered in the subsequent formal resolution unless the party who made the statement or disclosure gives written consent to its use during the formal resolution process. In the event that either party elects to move forward with formal resolution, a new investigator will be designated who was not involved in the informal resolution process.

5. Privacy of Informal Resolution

In order to promote honest, direct, communication, information disclosed during informal resolution must remain private while the informal resolution is pending, except where disclosure may be required by law or authorized in connection with duties on behalf of the College.

D. Complainant Does Not Wish to Pursue Resolution or Requests Confidentiality

If the Complainant does not wish to pursue formal or informal resolution and/or requests that his or her report remain confidential, the Title IX Coordinator or designee will inform the Complainant that the College's ability to respond may be limited. The Title IX Coordinator or designee may conduct a preliminary investigation into the alleged sexual misconduct and may weigh the Complainant's request against the following factors:

- The seriousness of the alleged sexual misconduct,
- Whether there have been other complainants of sexual misconduct against the same Respondent, and
- The Respondent's right to receive information about the allegations, including the name of the complainant.

The Title IX Coordinator will only initiate a formal complaint against the wishes of the Complainant where doing so is not clearly unreasonable based on known circumstances, based on the potential impact to the College community if the allegations were true.

The Title IX Coordinator or designee will inform the Complainant if the College cannot ensure confidentiality. Even if the College cannot take disciplinary action against the Respondent because the Complainant insists on confidentiality or that the complaint not be resolved, the College reserves the

authority to undertake an appropriate inquiry, issue a mutual "no contact" order to both parties, and/or take other reasonably necessary supportive measures, including the Supportive Measures described in Section E, below, to promote a safe learning environment for the Complainant and/or the entire College community.

E. Supportive Measures

The Title IX Coordinator may institute supportive measures to protect the safety of the college community, to enable parties and witnesses to continue their studies or work, and to ensure the integrity of an investigation. Supportive measures will be individualized, provided without fee or charge to the student(s) or employee(s), and are non-disciplinary in nature. Complainant's preferences will be considered when instituting supportive measures.

The College may make a non-disciplinary interim suspension of a student Respondent on an emergency basis. Prior to suspending a student, the College will conduct an individualized safety and risk analysis and determine whether there is an immediate threat to the physical health or safety of any individual. Any student so suspended will be provided with notice and an opportunity to challenge this action immediately following the removal.

The College may, in its discretion, place an employee Respondent on administrative leave pending the outcome of a grievance process.

The Dean of Students Office, Office of Human Resources, and/or Campus Security may also take additional interim supportive actions, as appropriate, including but not limited to:

- Offering counseling to any party;
- Extension of deadlines or other course-related adjustments;
- Modifying class or work schedules;
- Changing work or housing locations;
- Addressing other academic concerns (e.g., absences, assignments, grades, leaves of absence, withdrawal);
- Mutual restriction on contact between the parties;
- Safety planning, including campus escort services and increased security or monitoring of certain areas of campus;
- Leaves of absence; or
- Education/training.

VII. Available Resources and Services

There are campus and community services available to individuals who are subjected to sexual misconduct, regardless of whether an individual chooses to report a violation of these procedures to the College or local law enforcement. The College strongly encourages individuals subjected to sexual misconduct to seek assistance to care for themselves emotionally and physically through confidential crisis intervention, health care, and counseling. Individuals should keep in mind that medical examinations are time-sensitive and are critical in preserving evidence of sexual assault.

A. Confidential Advocacy and Support

Riverview Center (Cedar Rapids)

Riverview Center provides trained advocates to assist victims of sexual assault. Advocates can assist individuals with medical and legal advocacy, counseling, and case management. Advocates can speak with individuals confidentially as they consider their options. Any communication with a Riverview Center advocate is legally protected under Iowa Code Section 915.20, which allows for confidential communications that cannot be disclosed without the individual's permission.

50 2nd Ave Bridge

Cedar Rapids, IA 52401

319-540-0080

Website: www.riverviewcenter.org

Sexual Assault Hotline (24 hours a day) 888-557-0310

Waypoint Services (Cedar Rapids)

Waypoint provides shelter and support for women and families in crisis due to domestic violence or sexual assault.

318 5th Street SE

Cedar Rapids, IA 52401

319-365-1458

24-Hour Crisis & Support Line 800-208-0388 or 319-363-2093

RVAP (Iowa City and Surrounding Counties)

RVAP is a comprehensive sexual abuse response center based in Iowa City, Iowa. RVAP provide support, information and advocacy to members of the Iowa City community and citizens of the following areas:

- Cedar County
- Iowa County
- Johnson County
- Washington County

332 S. Linn Street, Suite 100

Iowa City, IA 52240

319 335-6000

800-228-1625

Website: www.rvap.org

Amani

This program serves survivors and victims of sexual assault and domestic violence in the African American communities in Cedar Rapids, Davenport, and Waterloo.

Crisis line: [888-983-2533](tel:888-983-2533)

www.amani-cs.org/

Latinas Unidas Por Un Nuevo Amanecer (LUNA)

This program serves survivors and victims of sexual assault and domestic violence in the Latino/Latinx communities throughout Iowa.

24-hour hotline: [866-256-7668](tel:866-256-7668)

www.lunaiowa.org/

Indigenous Survivors & Empowerment (RISE)

This program serves survivors and victims of sexual assault and domestic violence in the Native and Meskwaki communities in Iowa.

24-hour helpline: [855-840-7362](tel:855-840-7362)

www.meskwaki.org/rise/

Monsoon Asians & Pacific Islanders in Solidarity

This program serves survivors and victims of sexual assault and domestic violence in Asian and Pacific Islander (API) communities throughout Iowa.

24-hour helpline: [866-881-4641](tel:866-881-4641)

monsooniowa.org/

Nisaa African Family Services

This program serves survivors and victims of sexual assault and domestic violence in African Immigrant and Refugee communities throughout Iowa.

Iowa City office: [319-338-7617](tel:319-338-7617)

nisaa-afs.org/

Thrive Together

This program serves survivors and victims of sexual assault and domestic violence in the Deaf and Hard of Hearing communities throughout Iowa.

24/7 text only line: 515-661-4015

help@thrivetogethertoday.org

www.thrivetogethertoday.org/

Kirkwood Counseling Services

Students can meet with a counselor during normal business hours. Services are free and confidential.

Contact information: www.kirkwood.edu/counseling

In an emergency after hours, students and employees may call the 24-hour Foundation 2 hotline at 319-362-2174 or 800-332-4224.

Employee Assistance Program (Employees Only)

Employees can make use of the Employee Assistance Program for confidential counseling services.

Mercy Employee Assistance Program: 1-319-398-6694, or 1-800-383-6694

Student Health Services

Students can meet confidentially with a health care provider.

Contact information: <https://www.kirkwood.edu/explore/services/student-health-services>

B. Additional Resources

1. College Title IX Coordinator

The College has designated Jon Buse, Vice President for Student Services as the Title IX Coordinator to ensure Title IX compliance for the entire campus. The Title IX Coordinator is responsible for ensuring a non-discriminatory campus environment that is free from harassment. Individuals may obtain information from the Title IX Coordinator about the College's grievance process and may file a formal complaint with the Title IX Coordinator. Questions or concerns may be directed to (319) 398-4977 or 351 Benton Hall, Kirkwood Community College.

Deputy Title IX Coordinators are:

- Bobbi Miller, Associate Dean of Students, 319-398-7798
- Andrew MacPherson, Associate Vice President of Facilities and Security, 319-398-5669
- Melissa Payne, Executive Dean of Students, 319-398-5584
- Wes Fowler, Vice President of Human Resources, 319-398-7797

2. Public Safety: (319) 398-7777, www.kirkwood.edu/security

Public Safety provides services 24 hours a day and can respond to reports of emergencies. Public Safety works closely with law enforcement and can assist individuals in understanding their options for reporting incidents and assisting individuals in contacting local law enforcement to report an incident of sexual misconduct. Contacting Public Safety or law enforcement does not mean a student must pursue criminal charges. Public Safety can also assist individuals in safety planning and provides escort services.

3. Human Resources Office: 313 Kirkwood Hall, (319) 398-5572

Staff can assist an employee in filing a report or, if the employee is not ready to file a report, the staff can work with the person to address concerns over work assignments or schedules, leaves of absence, or other employment concerns. Staff can also assist the employee in notifying Campus Security or local law enforcement, if requested by the employee and provide referrals to employees to resources such as counseling or a confidential advocate.

4. Dean of Students Office: 2nd Floor Kirkwood Hall, (319) 398-5540

Staff can assist a student in filing a report or, if the student is not ready to file a report, the staff can work with the person to address concerns over housing, class assignments or schedules, leaves of absence, withdrawal or other academic concerns. Staff can also assist the student in notifying Campus Security or local law enforcement, if requested by the student and provide referrals to students to resources such as counseling or a confidential advocate.

C. External Resources

A Complainant may choose to file a complaint with the state and federal agencies listed below.

Office for Civil Rights (OCR) – Chicago Office

U.S. Department of Education
Citigroup Center
500 W. Madison Street, Suite 1475
Chicago, IL 60661
Phone: (312) 730-1560
Fax: (312) 730-1576 TDD: (877) 521-2172
Email: OCR.Chicago@ed.gov
Web: www.ed.gov/ocr

Equal Employment Opportunity Commission (EEOC)

Reuss Federal Plaza
310 W. Wisconsin Avenue, Suite 800
Milwaukee, WI 53203-2292
Phone: (800) 669-4000
Fax: (414) 297-4133
TTY: (800) 669-6820
Web: www.eeoc.gov/

Iowa Civil Rights Commission (ICRC)

Grimes State Office Building
400 E. 14th Street
Des Moines, IA 50319
Toll free: (800) 457-4416
Phone: (515) 281-4121
Fax: (515) 242-5840
TDD: (877) 521-2172
Web: <https://icrc.iowa.gov/>

VIII. Reporting Requirements

The College can respond to sexual misconduct only if the College is made aware of the behavior. Therefore, if a College employee becomes aware of a complaint or other violation of these procedures, the employee must immediately bring the information to the Title IX Coordinator or a Deputy Title IX Coordinator so that concerns can be addressed, and services can be offered to the affected individuals. Employees are expected to reasonably comply and cooperate with the College's process for receiving and responding to complaints under these procedures.

IX. Prevention, Training, and Policy Communication

The College is committed to education, communication and training in order to prevent sexual misconduct and to assure an appropriate response when incidents occur. The College will provide information on the following to students, faculty and staff:

- Preventing sexual misconduct
- Procedures for responding to incidents of sexual misconduct

- Resources available to individuals in cases of sexual misconduct

The College will provide training on the above information to all College personnel involved in providing any part of the college's response to reports of alleged sexual misconduct.

The College will also ensure that individuals who serve as Title IX Coordinators, Title IX Investigators, Sexual Misconduct Board Members, Appeal Decision-Makers, and facilitators of the informal resolution process have adequate training on the definition of sexual harassment, the scope of the College's education program or activity, how to conduct the College's investigation and grievance process, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts, conflicts of interest, and bias. The Sexual Misconduct Board will also receive annual training on any technology to be used at a live hearing and on relevance of questions and evidence, including exclusion of questions or evidence protected under applicable "rape shield" laws, rules, or regulations. Investigators must also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints under these procedures. This training may include expertise drawn from campus and community resources, professional organizations, and other experts on the topic of sexual misconduct.

The College will maintain materials used to train its employees on a website and will provide information about these procedures to all new students and employees through orientation and annually thereafter. These procedures are also available for distribution in printed form from the Dean of Students Office, Campus Security, and Human Resources and other College personnel involved in prevention and/or response activities.

X. Recordkeeping

The College will maintain the following records for seven years from the date of closure of the complaint:

- Each sexual harassment investigation, including determinations, audio or video recordings, disciplinary sanctions, and any remedies provided to the Complainant;
- Any appeal and the result therefrom;
- Any informal resolution; and
- All materials used by the College to train Title IX Coordinators, investigators, decision-makers, and those who facilitate informal resolution under these procedures.

Additionally, the College will create and maintain for seven years from the date of closure of any complaint:

- Any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment;
- Documentation of the basis for the College's conclusion that its response to any such report or complaint was not deliberately indifferent;
- Documentation that the College has taken measures designed to restore or preserve access to the College's educational program or activity;
- Where no supportive measures are provided to Complainant, documentation of why it was not clearly unreasonable to do so

References

¹ "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person without legitimate purpose or repeatedly conveying oral or written threats, threats implied by conduct, or a combination thereof, directed at or toward a person.

² If authority is vested with some other individual or decision-making body under federal, state, or local law, rule, or policy to render a particular sanction (e.g., termination of a College employee with a continuing teaching contract) the Sexual Misconduct Board shall issue a determination of responsibility for the underlying conduct and may make a recommendation regarding sanction. The matter shall be referred by the Title IX Coordinator or designee to the individual/decision-making body with authority to issue the sanction for further handling.

Definitions

Term	Definition
Term 1	
Term 2	
Term 3	
Term 4	

Revision Log

Version Number	Date Approved	Approved by	Brief Description of Change
1	9/30/2014	Jon Buse, Vice President, Student Services	
2		Cabinet	Procedure template 10/1/2019
3			Updates to procedure 9/21/2021