

# POLICY: Sexual Misconduct

## Sexual Misconduct Policy Statements

The Kentucky Community and Technical College System is committed to creating and maintaining a community where all persons who participate in college programs and activities can work and learn together in an atmosphere free of sexual misconduct. Therefore, KCTCS will not tolerate sexual misconduct as defined in this procedure. Such acts are prohibited by KCTCS policy and procedure, as well as state and federal law. Persons found to have more likely than not violated this procedure are subject to penalties up to and including expulsion or separation from KCTCS, regardless of whether they are also facing related criminal or civil charges before a government agency or court of law.

The KCTCS Sexual Misconduct Procedure applies to KCTCS students, faculty, and staff, as well as third parties who interact with the KCTCS community, and all KCTCS -sponsored programs, events, and activities, regardless of where the alleged sexual misconduct occurs. KCTCS will respond promptly and effectively to reports of sexual misconduct, and will take appropriate action to prevent, to correct and, when appropriate, to discipline behavior that violates this procedure on sexual misconduct. KCTCS also will take steps in the event of sexual misconduct to remedy its discriminatory effects on the complainant and others, if appropriate. Provi-

sions for the investigation and resolution of allegations are covered in the procedure and its appendices.

The KCTCS Sexual Misconduct Procedure governs KCTCS' prohibition of sexual misconduct, dating violence, domestic violence, sexual assault, and stalking. These policies and procedures address the legal definition of those terms, the definition of consent, safe and positive options for bystander intervention, information on risk reduction, and policies and procedures should an incident of sexual misconduct occur.

Through enforcement of policy and by education of students, employees and volunteers, KCTCS seeks to prevent, correct, and discipline behavior that violates our policies and has a detrimental impact on our college community. To ensure a harassment-free workplace, KCTCS mandates the following:

- All employees complete applicable components of the mandatory KCTCS Harassment-Free Workplace Training program when initially hired and annually thereafter; additionally, volunteers must complete the training program when they begin their service.

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- All employees, students, volunteers, customers, vendors, visitors, and other individuals shall engage in proper behavior and interactions.
- All supervisors, managers, and administrators shall take appropriate steps to report alleged incidents of harassment.

Upon receiving a complaint or becoming aware of suspect behavior, KCTCS officials shall take appropriate follow-up action for any alleged incidents of harassment. All students, employees and volunteers, particularly supervisors, have a responsibility for keeping our environment free of harassment. Any student, employee or volunteer who becomes aware of an incident of alleged harassment, whether by witnessing the incident or being told of it, should report it to an immediate supervisor, the Title IX Coordinator, human resources staff, or the designated management representative with whom they feel comfortable.

When supervisors or managers become aware of alleged harassment, it is KCTCS policy that they immediately notify the college Title IX Coordinator, the college Human Resources Office, the KCTCS Human Resources Office, or KCTCS Office of Legal Services in order for the claim to be fully investigated.

## Description of Primary and Ongoing Sexual Assault Awareness and Prevention Training:

In order to raise awareness around the issues of domestic violence, dating violence, stalking, and sexual assault KCTCS offers online training to all students through and employees using Safe Colleges. All KCTCS colleges provide the training in both the Fall and Spring semesters to students. Employees are required to take the training at the time of hire, and again in the fall of each year. The training platform provides the following information to students and employees:

### *Definitions.*

#### **Domestic Violence** (KRS 403.720):

- (1) "Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;
- (7) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

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## ***Stalking*** (KRS 508.130):

- (1) (a) To "stalk" means to engage in an intentional course of conduct:
  1. Directed at a specific person or persons;
  2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
  3. Which serves no legitimate purpose.(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.
- (2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.

## ***Sexual Misconduct*** (KRS 510.140):

- (1) A person is guilty of sexual misconduct when he engages in sexual intercourse or deviate sexual intercourse with another person without the latter's consent.
- (2) Sexual misconduct is a Class A misdemeanor.

## ***Lack of Consent*** (KRS 510.020):

- (2) Lack of consent results from:
  - (a) Forcible compulsion;
  - (b) Incapacity to consent; or
  - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (3) A person is deemed incapable of consent when he or she is:
  - (a) Less than sixteen (16) years old;
  - (b) Sixteen (16) or seventeen (17) years old and the actor is at least ten (10) years older than the victim at the time of the sexual act;
  - (c) An individual unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or a mental illness;
  - (d) Mentally incapacitated;
  - (e) Physically helpless; or
  - (f) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

## ***Safe and Positive Options for Bystander Intervention:***

Information on safe and positive options for bystander intervention was presented through the lens of social norms and dispelled the myth that most students wouldn't act if they saw a situation that was

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potential leading up to a sexual misconduct assault. Options for bystander intervention included direct intervention, distraction, and delegation.

## ***Information on Risk Reduction:***

Safe College's platform delivers risk reduction information without using language victim-shaming language. It encourages students to look out for one another and stand up and speak out when they see an abusive situation occurring. The program also provides a variety of tips to keep students mindful of their surroundings when at social events.

## **Reporting Procedures for Sexual Misconduct:**

***KCTCS encourages any individual who has suffered an incident of sexual violence to seek immediate assistance from a medical provider and/or law enforcement. This is the best way to ensure that evidence is preserved and that a timely investigation and response are initiated.***

***Importance of preserving evidence***  
***An individual who is considering making a criminal complaint or taking other legal action should seek medical care as soon as possible after the assault. It is important for the individual to not bathe, douche, or change clothing prior to the medical examination***

***in order to avoid inadvertently removing important evidence. The kind of evidence that supports a legal case against an accused should be collected within 72 hours of an assault.***

This evidence may also assist in proving that the alleged criminal offense occurred/or is occurring or may be helpful in obtaining a protection order. In circumstances of sexual assault, if victims do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted disease. Victims of sexual assault, domestic violence, stalking, and dating violence are encouraged to also preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if they have any, that would be useful to college hearing boards/investigators or police.

## ***How and to whom***

KCTCS strongly encourages all individuals to report incidents of harassment, sexual assault, domestic violence, dating violence, and stalking to their college's Title IX Coordinator and/or local police. Reports can be made to the Title IX Coordinator by phone, email, or in person. Reports can also be made anonymously through Ethics Point. <https://secure.ethicspoint.com/domain/media/en/gui/28458/index.html>.

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## ***Options about the involvement of law enforcement***

All individuals who make a report of sexual misconduct to their college's Title IX Coordinator have the right to decide whether to file a report with local law enforcement. They may choose to notify local police independently, request assistance from the college to file a police report, or decline to notify such authorities. While KCTCS ultimately respects the rights of the complainant's decision to involve local police authorities there may be some circumstances that pose an on-going threat to the health and safety of the campus community that may warrant a police investigation. In these rare cases, a complainant still maintains the right to decide whether or not to cooperate with those authorities.

## ***Rights of Victim's – Institutional Responsibilities for EPOs***

It is the responsibility of students, faculty and staff with emergency protective orders to bring this to the attention of college administrators. When this occurs, the college will attempt to assist in maintaining this protective order by calling local authorities should an individual violate this order. If an individual is violating an emergency protective order on a KCTCS campus, we encourage the EPO holder to notify police and/or campus security immediately.

## ***Confidentiality***

KCTCS seeks to respect requests for confidentiality in its response to incidents of discrimination, harassment, and retaliation. However, it may be necessary to reveal certain personally identifying information to investigate

and address complaints effectively. In such cases, the college takes steps to ensure that information is only shared as necessary, on a need-to-know basis, to resolve the underlying allegations.

College employees, including faculty, administrators, staff, and student employees, must report to the Title IX Coordinator any incidents of possible sexual harassment, sex discrimination, or retaliation on campus of which they are aware.

## **Disciplinary Proceedings**

In every report of sexual misconduct, KCTCS will make a prompt assessment of whether the report concerns conduct covered by KCTCS's sexual misconduct procedure. KCTCS will also assess any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps may include interim protective measures to provide for the safety of the individual and the campus community.

## ***Initial Assessment***

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

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

After consideration of these factors, KCTCS has a range of response options, from informal resolution, which may include a remedies-based approach (reserved for less egregious violations) up through the disciplinary process. If the violation warrants, the SO Title IX Committee will refer the matter for investigation. The initial assessment may take one to three business days.

## ***Investigation***

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

The investigation will be a fair and reliable fact-gathering process. The investigation will be conducted thoroughly, impartially, and fairly. The investigation will be respectful of individual privacy concerns, but must be performed in a manner that will ensure KCTCS's compliance with all state and federal laws, including provision of due process to the Respondent. It is the complainant's choice as to whether he/she participates in an investigation; however, KCTCS may proceed with an investigation without the com-

plainant's participation.

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

## ***Formal Resolution***

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

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

## ***Informal Resolution***

Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that informal resolution may be appropriate, KCTCS will take immediate action to protect the rights of the Complainant and remediate and correct the policy violations leading to the complaint.

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## ***Timeframe***

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

## ***Prompt, Fair, and Impartial Process***

KCTCS seeks to resolve all cases of sexual misconduct in a manner that is prompt, fair, and impartial by ensuring the following rights and options are reserved for both the complainant and the respondent:

- The complainant and respondent will be provided the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. While this choice is available, KCTCS will not allow the advisor to address the investigators or the hearing board at any point during this process. The advisor is only available for emotional support and guidance.
- Both parties will receive simultaneous notification of the result of the disciplinary proceedings, procedures to appeal the results of a disciplinary proceeding, any chance to that result, and when the result becomes final.
- The investigations and disciplinary proceedings will be conducted by officials who receive annual train-

ing on the issues related to domestic violence, dating violence, sexual assault and stalking.

## **Sanctions for Policy Violation for Students:**

Students found responsible for policy violations can result in the following sanctions:

1. Reprimand: Official written or oral statement to the student that he or she is guilty of violating a college regulation. A reprimand warns that any further such actions may result in a more severe sanction.
2. Restitution: Compensation to the college for damages to college property.
3. Social Probation: Status given to less serious policy violations, and in some cases, a restriction of privileges for a specified time.
4. College/Community Service: Service to the college or community of up to 16 hours be served within a specified time frame.
5. Educational Sanction: An educational sanction requiring attendance or participation in a pre-arranged class, program, or activity designed to prevent or deal with high-risk behavior.
6. Counseling: Student may be referred to counseling evaluation on appointment by Counseling Services.
7. Eviction: Forced removal from a classroom or other college property.
8. College Probation: Status that carries a severe warning that any further violation of college regulations that may result in the student going before the College Appeals Board for consideration of suspension or expulsion.



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This may include restrictions of privileges for a specified period of time.

9. Suspension: Forced withdrawal from the college for a specified period of time or until stated conditions have been met as determined by the College Appeals Board. College will place the Student Dean Hold service indicator for no future enrollments at the Home College or other KCTCS college during the specified period of time or until stated conditions had been met.

10. Immediate Suspension: A student may be suspended immediately when:

a. In the judgment of the chief executive officer (upon consultation with the chief student affair's officer), the presence of the student poses a serious threat to persons and/or property provided informal opportunity is first given to the student, except in the case of exigent circumstances, to discuss the matter and possible resolution.

b. The student refuses to cease disruptive behavior or conduct in violation of this policy after direct orders from the chief executive officer (upon consultation with the chief student affair's officer).

c. When such suspension is involved, the student must leave the campus immediately. Students refusing to do so will be removed by law enforcement authorities and charged with trespassing.

When a student is placed on immediate suspension, a disciplinary hearing will be held at the earliest reasonable time (see Student Code of Conduct Section 3.6.).

11. Expulsion: Permanent, forced withdrawal from the college as determined by the College Appeals Board.

## **Accommodations/Protections:**

Students and employees who file claims of harassment

have a variety of accommodations and/or protective remedies available to them. One or more of the following may apply to the situation:

- referral to counseling services and other resources
- rescheduling of exams or assignments (in conjunction with appropriate faculty)
- no-contact letter
- temporary class schedule reassignment
- provision of an escort on campus property
- temporary work reassignment

One or more of the following protective remedies may be enacted for the respondent:

- administrative leave during the investigation and resolution
- immediate temporary suspension from the college during the investigation and hearing process
- interim volunteer duty reassignment
- suspension of volunteer duty during the investigation; report of the matter to local law enforcement in the jurisdiction in which the college is located
- ban from college location(s)
- limited access to college facilities or organizations pending resolution of the report
- report of the matter to local law enforcement in the jurisdiction in which the college is located

KCTCS further reserves the right to apply any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

Complainants and respondents will be provided a copy of the KCTCS policy and procedure containing available resources and detailing the applicable resources, rights, and responsibilities involved in the complaint, investigation and adjudication process.



# SEX OFFENDER REGISTRY

In compliance with the Federal Campus Sex Crimes Prevention Act of 2000, KCTCS, through the Kentucky State Police, makes information available to the campus community concerning registered sex offenders who may be employees or students at your college.

The Kentucky State Police provides sex crime offender registration information to the public through the Sex Offender Registry website. Search the KSP Sex Offender Registry Website

<http://kspSOR.state.ky.us/>

According to the Kentucky State Police, this website is for public safety and awareness. Pursuant to KRS 525.070 and 525.080, use of information from this website to harass a sex offender is a criminal offense punishable by up to 90 days in the county jail. More severe penalties apply for more severe crimes committed against a sex offender.



## REPORTING SUSPICIOUS ACTIVITY

To report suspicious activity, contact your local law enforcement agency. Describe specifically what you observed, including:

- ✓ **Who** or **what** you saw,
- ✓ **When** you saw it,
- ✓ **Where** it occurred; and
- ✓ **Why** it's suspicious.

If there is an emergency, call 9-1-1.