



## **Nondiscrimination and Student Grievance Policy:**

*Approved By and Date:*

*Board of Trustees, 12-11-2017*

*Executive Leadership Team, 11-16-2017*

**Kilgore College prohibits discrimination, including harassment, against any student on the basis of sex, race, color, religion, age, national origin, disability, veteran's status, genetic information, or any other characteristic protected by institutional policy or local, state, or federal law. The institution is committed to promptly responding to and resolving concerns involving allegations of illegal discrimination, including illegal harassment, in violation of local, state and/or federal civil rights laws and/or regulations.**

## **Nondiscrimination and Student Grievance Procedures:**

*Approved By and Date:*

*Executive Leadership Team, 11-16-2017*

To ensure that the process for considering student grievances is well publicized, reasonable, and fairly administered, the Kilgore College Title IX coordinator will coordinate the student grievance process for the entire institution.

### **Definitions**

1. **Discrimination:** Any distinction, preference, advantage for or detriment to an individual compared to others that is based upon an individual's actual or perceived sex, race, color, religion, age, national origin, disability, veteran's status, genetic information, or any other characteristic protected by institutional policy or local, state, or federal law that is so severe, persistent, or pervasive that it unreasonably interferes with or limits a student's ability to participate in or benefit from the College's educational program or activities.
2. **Discriminatory Harassment:** Detrimental action based on an individual's actual or perceived sex, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation, or other protected status that is so severe, persistent, or pervasive that it unreasonably interferes with or limits a student's ability to participate in or benefit from the College's educational program or activities.
3. **Retaliatory Harassment:** Intentional action taken by an accused individual or allied third party, absent legitimate non-discriminatory purposes, that harms an individual as reprisal for filing or participating in a civil rights grievance proceeding.
4. **Sexual Harassment of a Student by Another Student:** Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a student toward another student that is so severe, persistent, or pervasive that it unreasonably interferes with or limits a student's ability to participate in or benefit from the College's educational program or activities.

5. Sexual Harassment of a Student by a Faculty/Staff Member: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a faculty or staff member toward a student are held to constitute sexual harassment when:
  - a. Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating an individual's educational or activity development or performance; or
  - b. Such conduct is so severe, persistent, or pervasive that it unreasonably interferes with or limits a student's ability to participate in or benefit from the College's educational program or activities.
6. While a particular interaction must be offensive to both a reasonable person and to the victim to be defined as harassment, faculty and staff members and other persons of authority should be sensitive to questions about mutuality of consent that may be raised and to the conflict of interests that are inherent in personal relationships that result from professional and educational interactions. Harassment is particularly damaging when it exploits the educational dependence and trust between students and faculty/staff. When the authority and power inherent in faculty/staff relationships with students, whether overtly, implicitly, or through misinterpretation, is abused in any way, there is potentially great damage to the individual student, to the accused individual, and to the climate of the institution.
7. Sexual Violence: A form of sexual harassment that includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs, alcohol, or other intoxicating substances or due to an intellectual or other disability. Examples of sexual violence include non-consensual sexual contact, non-consensual sexual intercourse, rape, sexual battery, and other sexually motivated conduct, communications, or contact.

### **Grievances Concerning Discrimination and/or Harassment:**

The college does not permit discrimination or harassment in its programs and activities on the basis of sex, race, color, religion, age, national origin, disability, veteran's status, or genetic information or any other characteristic protected by institutional policy or local, state, or federal law. Students who believe they have been subjected to discrimination or harassment in violation of this policy should follow the procedures outlined herein to report those concerns.

### **How to File a Grievance:**

Students or any other persons who wish to report a concern or file a grievance relating to Discrimination or Harassment (including Sexual Violence) may do so by reporting the concern to the College Student Title IX coordinator or his/her designee. When appropriate, a third party (such as an attorney) maybe the designee. When investigating the complaint, he/she will act as an impartial party rather than a representative of either the complaining or accused parties and will not offer opinions on the matter when interviewing and investigating. The Student Title IX coordinator designated by the College is:

Bindy Tice  
Kilgore College  
1100 Broadway Blvd.  
Kilgore, TX 75662  
(903) 988-7590  
btice@kilgore.edu

Individuals with grievances of discrimination also always have the right to file a formal grievance with the United States Department Education:

Office for Civil Rights (OCR)  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012

TDD#: (877) 521-2172  
Email: OCR@ed.gov  
Web: <http://www.ed.gov/ocr>

### **Responsible Employees:**

These designated individuals are defined as the College president, Student Title IX coordinator, any vice president, the executive dean of KC—Longview, any instructional division dean, any member of the Kilgore College Police Department, the director of student success/athletic director, the director of enrollment management and marketing, the director of admissions and registrar, the coordinator of residential and student life, and the director of financial aid. These employees of Kilgore College are considered mandatory reporters.

### **Overview of the Grievance Process:**

The grievance process involves an immediate initial investigation to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the College will initiate a prompt, thorough, and impartial investigation, or facilitate an informal resolution. This investigation is designed to provide a fair and reliable determination about whether the College's nondiscrimination policy has been violated. If so, the College will implement a prompt and effective remedy designed to end the discrimination, prevent its recurrence, and address its effects.

### **Informal Dispute Resolution Efforts:**

Informal resolution is optional and may be used if the College determines that it is appropriate under the circumstances, and both parties are agreeable. A College representative will facilitate the process.

### **Filing a Grievance:**

The Student Title IX Coordinator is designated to formally coordinate and oversee the student grievance process, address inquiries, and coordinate the College's compliance efforts regarding student grievances. Notice of a formal grievance may be made in person or orally to a "responsible employee", but the College encourages submission of grievances in writing or by email. If the report is made orally, the Student Title IX coordinator will reduce the report to written form.

Reports of prohibited conduct will be made as soon as possible after the alleged act or knowledge of the alleged act. A failure to immediately report may impair the College's ability to investigate and address the prohibited conduct. Requests for confidentiality will be honored to the extent possible, but cannot be guaranteed in any instance.

### **Requested Contents of a Written Grievance:**

The grievant should clearly and concisely describe the incident(s), when and where it occurred, and the desired remedy sought. The grievance should be signed by the initiator or, in the case of an email submission, sent as an email attachment, in letter format and should contain the name and all contact information for the grievant. Any supporting documentation and evidence should be referenced within the body of the formal grievance.

### **Options for Addressing Grievances:**

It is the responsibility of the Student Title IX coordinator to determine the most appropriate means for addressing the report or grievance. Options include one or a combination of the following: 1) investigating the report or grievance as described below; 2) resolving the situation through an informal resolution process; 3) determining that the facts of the grievance or report, even if true, would not constitute a violation of the conduct code or applicable policy; or 4) determining that the allegations are unfounded.

**Interim Action:**

If appropriate, and regardless of whether a criminal or regulatory investigation regarding the alleged conduct is pending, the College may, at the College's discretion, promptly take interim action calculated to address prohibited conduct prior to the completion of the investigation. Examples of possible interim actions include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, changes in classes or extra-curricular activities, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

**Investigation Process and Protocols:**

The Student Title IX coordinator will make a good faith effort to conduct a fair and impartial review and/or resolve the grievance in a prompt and timely manner. All persons investigating such grievances will be impartial and free of any conflict of interest or bias in the outcome.

If an investigation is conducted, the Student Title IX coordinator may appoint an investigator(s) and will send the respondent a notice of investigation as soon after the commencement of the investigation as is practical. The notice of investigation will include a description of the alleged misconduct, which includes sufficient detail for the respondent to prepare a response, and the requirement that the respondent must set up a meeting with the Student Title IX investigator within the time frame designated in the notice. The respondent will be given adequate time to prepare a response prior to this initial meeting. At the meeting, the respondent will have the opportunity to respond to the allegations, present relevant information, identify and/or present relevant witnesses (other than the grievant) or witness statements, and have an advisor or counsel present.

The notice will be sent to the student or employee's college e-mail address; it may also be hand-delivered or sent to the mailing or permanent address appearing in the college's information system, or police report. Notice to the student or employee will be considered furnished on the date of hand-delivery; on the date e-mailed or three days after the date the notice is placed in the U.S. mail.

If the respondent does not schedule or attend a meeting by the date specified in the notice, or if the respondent or grievant schedules a meeting but does not attend or attends but does not participate, the Student Title IX investigator may complete the investigation based on the information obtained.

The College president will be notified when an investigation occurs. Other College employees may be notified on an as-needed basis only.

At the conclusion of an investigation, the investigator will prepare a written report that will include a statement of factual findings and a determination as to whether or not there was a violation of the Code of Student Conduct or College policy. The standard of proof will be a preponderance of the evidence (more likely than not).

If a law enforcement or regulatory agency notifies the College that a criminal or regulatory investigation has been initiated, the Student Title IX coordinator will confer with the investigating agency to determine if the College's investigation would impede the ongoing criminal or regulatory investigation. The College will proceed with its investigation only to the extent that it does not impede the ongoing criminal or regulatory investigation. If the College is compelled to suspend its investigation, it will promptly resume the investigation as soon as the law enforcement or regulatory agency has completed gathering its evidence.

**Student Title IX Coordinator's Review of the Investigatory Report:**

The Student Title IX coordinator will receive and review the investigator's report. Within the scope of this review, the Student Title IX coordinator may consult with the parties, request that further investigation be done by the same or another investigator, or request that the investigation be conducted again by another investigator. The Student Title IX coordinator may conduct his/her own investigation or interviews.

**Final Determination:**

The Student Title IX coordinator may adopt the investigator's report as his/her own final determination or may prepare a separate final determination report based on the findings of the investigation.

**Notification of Final Determination:**

The Student Title IX coordinator will advise the grievant and respondent of the final determination of the findings of any investigation conducted under this policy. A copy of the final written report as approved by the Student Title IX coordinator will be concurrently provided to: (1) the grievant; and (2) the respondent. This written report provided to grievant and respondent will comply with the Family Educational Rights and Privacy Act (FERPA), and a copy of same will be provided to the College president.

**Assignment of Sanctions:**

In cases where the investigation results in a determination that the Code of Student Conduct or College policy has been violated, the Student Title IX coordinator or his/her designee will determine an appropriate sanction(s), in accordance with the Code of Student Conduct or College policy. The grievant or the respondent may submit a written impact statement or other evidence that would be relevant to the imposition of a sanction within three (3) business days of the date of notification of final determination. If no impact statement or other evidence is submitted, the Student Title IX coordinator or designee will determine the sanction without the parties' input and provide written notice of same to both parties.

**Time Frame and Grounds for Filing an Appeal of the Findings:**

Should the respondent or the grievant not accept the findings of the investigation, the decision of the Student Title IX coordinator may be appealed in the circumstances described below. All other findings are final.

The ONLY grounds for appeal are as follows:

- a. A procedural (or substantive error) occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.); or
- b. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.

Thus, the party requesting appeal must provide new evidence or show error as the original finding is presumed to have been decided reasonably and appropriately. Respondents or grievants must petition for an appeal, in writing, within three (3) business days of receiving the written decision of the findings. The College will share the appeal with the other party (e.g., if the respondent appeals, the appeal is shared with the grievant, who may also wish to file a response). All appeals and responses are then forwarded to a standing appeals committee for review to determine if the appeal meets the limited grounds and is timely. The original finding will stand if the appeal is not timely or substantively eligible, and the decision is final. If the appeal has standing and is timely, then the standing committee will review the documentation and consider the appeal. The appeal is appellate in nature and only written evidence/documentation will be considered. No oral arguments or live witnesses will be presented.

**Time Frame and Grounds for Filing an Appeal of Sanctions:**

Sanctions imposed by the Student Title IX coordinator or designee post investigation can be appealed by either party according to the grounds detailed below.

Either the grievant or the respondent may petition, in writing, within three (3) business days of receiving notice of the sanctions for a review of the decision. The College will share the appeal with the other party (e.g., if the respondent appeals, the appeal is shared with the grievant, who may also wish to file a response and vice versa). All appeals and responses are then forwarded to a standing committee for review to determine if the

appeal is timely. The original finding will stand if the appeal is not timely, and the decision is final. If the appeal is timely, then the standing committee will review the appeal of sanctions. The appeal is appellate in nature and only written evidence/documentation will be considered. No oral arguments or live witnesses will be presented.

If the appeal of sanctions is filed by a respondent who is a contractual employee and the sanction is termination, then the respondent's appeal will be handled through the hearing procedure provided in the College's Policy regarding termination of employment for contractual employees (as opposed to the standing committee referred to above). However, the hearing committee's decision is final and non-appealable.

All sanctions imposed by the Student Title IX coordinator will be in effect pending any appeal. Graduation, study abroad, internships/externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student and/or employee to his/her prior status, recognizing that some opportunities lost may be irretrievable in the short term.

### **Records Retention:**

In all cases, the Student Title IX coordinator will retain the investigator's report and final sanction decision for a minimum of seven years after the respondent graduates or permanently withdraws from the college. All records, reports, and investigations obtained pursuant to this process will not be disclosed publicly except to the extent required by law.

### **Grievant Support and Protection:**

The investigator will discuss with the grievant the support services available to him or her (e.g. counseling services, community resources, etc.). The investigator or Student Title IX coordinator will also discuss with the grievant whether he/she resides in the same housing or has classes or activities with the respondent and may take interim steps to protect the grievant prior to the outcome of the investigation if deemed necessary by the College.

### **Special Grievance Process Provisions:**

1. **Attempted violations.** In most circumstances, the College will treat attempts to commit any of the violations listed in the Code of Student Conduct as if those attempts had been completed.
2. **College as Grievant.** As necessary, the college reserves the right to initiate a grievance, to serve as grievant, and to initiate conduct proceedings without a formal grievance by the victim of misconduct.
3. **False Reports.** The college will not tolerate intentional false reporting of incidents. It is a violation of the Code of Student Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.
4. **Limited Immunity for Victims and Witnesses.** The College encourages victims and witnesses to report violations of the Student Code of Conduct, College policy, and crimes. Sometimes, victims or witnesses are hesitant to report to College officials or participate in grievance processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to College officials, and that witnesses come forward to share what they know. While policy violations cannot be overlooked, the College will generally provide educational options, rather than punishment, to crime victims and witnesses.

**Bystander Engagement.** The welfare of students in the College community is of paramount importance. At times, students on and off-campus may need assistance. The College encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, as student who has been drinking underage might hesitate to help

take a sexual misconduct victim to the campus police). While policy violations cannot be overlooked, the College will generally provide educational options, rather than punishment, to those who offer their assistance to others in need.