



Employee Nondiscrimination & Grievance Policy:

Approved By and Date:

Board of Trustees, 8-24-2020

Executive Leadership Team, 8-14-2020

Policy:

Kilgore College prohibits discrimination, including harassment, against any employee on the basis of sex, race, color, religion, age, national origin, disability, veteran's status, genetic information, gender identity, sexual orientation, 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.

Procedures:

Approved By and Date:

Executive Leadership Team, 8-14-2020

To ensure that the process for considering employee grievances is well publicized, reasonable, and fairly administered, the Kilgore College Title IX Coordinator will coordinate the employee grievance process for the entire institution. Victims of sexual harassment, sexual assault, dating or domestic violence, or stalking have the right to report the incident to the institution and to receive a prompt and equitable resolution of the report.

Definitions:

1. **Discrimination:** Discrimination against an employee is defined as conduct directed at an employee on the basis of sex or gender, including gender identity and gender expression, that adversely affects the employee's employment.
2. **Sexual Harassment:** Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:
 1. Submission to the conduct is either explicitly or implicitly a condition of an employee's employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or
 2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment. (Sexual harassment

also includes sexual assault, dating violence, domestic violence, and stalking. In order to constitute sexual harassment under this policy, the alleged conduct must occur within the College's own educational program or activity and it must occur within the United States).

3. Sexual assault: an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program:
 1. 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 the consent of the victim.
 2. Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 3. Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 4. Statutory Rape: sexual intercourse with a person who is under the statutory age of consent.
4. 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.
 1. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 2. For the purposes of this definition—
 1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 2. Dating violence does not include acts covered under the definition of domestic violence.
5. Domestic violence: violence committed by: a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction; or by any other person against the victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction where the conduct occurs.
6. Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:
 1. Course of conduct: two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 2. Reasonable person: a reasonable person under similar circumstances and with similar identities to the victim.
 3. Substantial emotional distress: significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
7. A formal complaint is a document signed by a Complainant or the Title IX Coordinator that alleges sexual harassment against a Respondent that occurred within the College's educational program or activity within the United States and requests an initiation of an investigation.

8. Actual knowledge as used herein means that the Title IX Coordinator or an official with the College with the authority to take corrective measures has actual knowledge of a complaint of sexual harassment.
9. Complainant: An individual alleged to be the victim of sexually harassing conduct.
10. Respondent: Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. The Respondent is presumed not responsible; the determination of responsibility is made at the conclusion of the grievance process.
11. Days: As used herein, days means business days when the College is open.
12. Confidential Employee: A “confidential employee” is a person who holds a professional license requiring confidentiality, such as a counselor or medical provider, who is supervised by such a person, or a person who is a nonprofessional counselor or advocate designated in administrative procedures as a confidential source.
13. Educational Program or Activity: Includes locations and events over which the College exercises substantial control over both the Respondent and the context where the sexual harassment occurred whether on or off campus. It also includes any building owned or controlled by a student organization that is officially recognized by the College.

Medical Treatment and Preservation of Evidence:

Victims of sexual harassment, sexual assault, domestic violence, dating violence, or stalking are strongly encouraged to go to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident

Grievances Concerning Discrimination and/or Harassment:

The College does not permit discrimination or harassment in its employment, programs and activities on the basis of sex, race, color, religion, age, national origin, disability, veteran’s status, gender identity, sexual orientation, or genetic information or any other characteristic protected by institutional policy or local, state, or federal law. Employees 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:

Employees or any other persons who wish to report a concern or file a grievance relating to Discrimination or Sexual Harassment may do so by reporting the concern to the Title IX Coordinator. The Title IX Coordinator designated by the College is:

Bindy Tice

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

In addition, the College provides an electronic reporting form on its website (<https://www.kilgore.edu/about/institutional-information/title-ix>). This link is displayed as “Title IX” on the Kilgore College Homepage (www.kilgore.edu) at the bottom of the screen under the Helpful Links section. Individuals filing an electronic report of discrimination and/or harassment may choose to remain anonymous.

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>

Victims of a crime have the right to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime, or to decline to report the crime to law enforcement.

Employee Reporting Requirements:

All College employees must promptly report to the institution's Title IX Coordinator:

- Observations witnessed or information received while in the course and scope of their employment;
- That the employee reasonably believes constitutes an incident of sexual harassment, sexual assault, dating violence, or stalking;
- Committed by or against
 - A student who was enrolled at the institution at the time of the incident
 - An employee employed by the institution at the time of the incident;
- Regardless of when or where the incident occurred.

An employee who fails to make a required report shall be subject to appropriate disciplinary action, including termination. Employees who hear about an incident at an awareness event; employees who themselves are victims of sexual harassment, sexual assault, dating violence, or stalking; and employees, such as counselors and health care providers, who are subject to legal confidentiality requirements are exempt from this requirement.

All employees (other than Confidential Employees) are designated as responsible employees for purposes of complying with Title IX.

Overview of the Grievance Process:

The College is only required to investigate a formal complaint, as defined herein. If the requirements of a formal complaint are not met, the complaint will be dismissed. If the College has actual knowledge of multiple Complainants regarding the conduct of the same person that constitutes sexual harassment under this policy, then the Title IX Coordinator must file a formal complaint. If there is no formal complaint, the College must still implement support measures designed to restore or preserve access to its educational programs or activities, protect the safety of the employee, and/or deter sexual harassment when necessary, and must also give written notice to the Complainant stating that he/she can file a formal complaint at a later time. It is generally up to the alleged victim whether to file a formal complaint, and the College will respect those wishes in most circumstances.

If there is a formal complaint, then the College will initiate an initial assessment to determine whether the allegations, if proven, would violate this policy. If so, the College will initiate a reasonably 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.

Extension of Timelines:

Timelines established by this policy and associated procedures may be subject to a limited extension if good cause exists. The College shall promptly provide written notice to the parties of an extension and the reason for the extension.

Informal Resolution:

Informal resolution is optional and may be used at any point after a formal complaint is filed if the College determines that it is appropriate under the circumstances, and both parties voluntarily agree to same and consent in writing. A College representative will facilitate the process. This process is not available in instances where an employee is the Respondent and the Complainant is a student. Consent to informal resolution may be withdrawn at any time before formal resolution.

Filing a Grievance:

The Title IX Coordinator is designated to formally coordinate and oversee the employee grievance process, address inquiries, and coordinate the College's compliance efforts regarding employee grievances.

Reports of prohibited conduct should 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.

Confidentiality:

The identity of a victim, Complainant, person who participates in an investigation, or Respondent if, after the investigation is complete, the College determines that the Complaint is unsubstantiated or without merit, is confidential. However, the identities of the persons listed in the preceding sentence may be disclosed as necessary to carry out the Title IX investigation and may specifically be disclosed to: employees or contractors of the College on a need-to-know basis, law enforcement, healthcare providers, Respondent and potential witnesses.

Requested Contents of a Formal Complaint:

The Complainant should clearly and concisely describe the incident(s), when and where it occurred, and the desired remedy sought. The complaint should be signed by the Complainant 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 Complainant and signed electronically. Any supporting documentation and evidence should be referenced within the body of the formal complaint. The complaint should also specifically request initiation of the grievance procedure.

Consolidate Reports:

When the allegations underlying two or more reports arise out of the same facts or circumstances, the College may consolidate the reports.

Advisor:

Each party to the complaint may be assisted by an advisor of the party's choice who may participate in the proceedings in a manner consistent with College procedures.

Conflict of Interest Prohibited:

No person designated as the Title IX Coordinator, an investigator, a decision-maker, or a facilitator of an informal resolution process shall have a conflict of interest or bias.

Training:

A person designated as the Title IX Coordinator, an investigator, a decision-maker, or a facilitator of an informal resolution process shall receive training as required by law and College procedures.

Interim Action and Resources:

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, modifications of work schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

To the greatest extent practicable based on the number of counselors employed, the College will ensure each Complainant, Respondent, and reporters of such incidents has access to counseling provided by a counselor who is not providing counseling to others involved in the incident.

Investigation Process and Protocols:

While an alleged victim may request that the institution not investigate the reported incident; the Title IX Coordinator will choose whether or not to honor the request not to investigate after considering:

- Seriousness of the allegation
- Existence of other reports
- Risk of harm to others
- Any other relevant factors

The Title IX Coordinator will inform the alleged victim of the decision. Should the Coordinator honor the alleged victim's request not to investigate, the College will take the reasonable steps it determines are necessary, consistent with the law and institutional policy, to protect the health and safety of the community in relation to the alleged incident.

Should the investigation proceed, the Title IX Coordinator shall immediately provide notice to the parties (as described below). The Title IX Coordinator will make a good faith effort to conduct a fair and impartial review and/or resolve the grievance in a reasonably prompt and timely manner. All

persons investigating such grievances will be impartial and free of any conflict of interest or bias in the outcome.

Notice to Parties:

The notice to the parties must describe the allegations and the formal and informal options for resolution of the complaint. The notice must state that the Respondent is presumed not responsible until a determination regarding responsibility is made. The notice must also include information regarding the option to select an advisor, the opportunity to inspect and review evidence, and the prohibition on knowingly making false statements or submitting false information during the investigation and any ensuing proceedings.

If the allegations are subsequently amended, the College shall provide an updated notice reflecting the new allegations.

College Investigation:

The investigation may be conducted by the Title IX Coordinator or designee, or by a third party designated by the College, such as an attorney.

The investigation may consist of personal interviews with the Complainant, the Respondent, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.

The parties shall be provided an equal opportunity to present witnesses and evidence and to inspect and review any directly related evidence obtained by the College so that the parties may meaningfully respond during the investigation process. The parties expected to participate in an investigative interview or other meeting shall be provided written notice in enough time to prepare to participate.

At least ten days prior to the completion of the investigation report, the College must send each party and the party's advisor evidence subject to inspection and review. The parties may submit a written response for consideration by the investigator.

Criminal or Regulatory Investigation:

If a law enforcement or regulatory agency notifies the College that a criminal or regulatory investigation has been initiated, the College shall confer with the agency to determine if the College's investigation would impede the criminal or regulatory investigation. The College shall proceed with its investigation only to the extent that it does not impede the ongoing criminal or regulatory investigation. After the law enforcement or regulatory agency has completed gathering its evidence, the College shall promptly resume its investigation. Any delay under this provision shall constitute good cause for an extension of timelines established by this policy and associated procedures.

Administrative Leave:

An employee may be placed on administrative leave in accordance with the College's policies pending the conclusion of the grievance process.

Concluding the Investigation:

The investigation shall be completed within a reasonable time, which generally should not exceed 60 Days from the date of the formal complaint. However, this timeframe can be extended if necessary to complete a thorough investigation.”

The investigator shall prepare a written report of the investigation. The investigation report shall be filed with the Title IX Coordinator within five (5) days following the completion of the investigation.

Unfounded Allegations:

If the results of an investigation indicate that no prohibited conduct occurred, the allegations shall be dismissed as unfounded. The College shall provide written notice of the dismissal and that shall be the official outcome, unless the decision is appealed.

Notification of the Investigation Report:

The Title IX Coordinator shall provide the investigation report, within the extent permitted by law, to the Complainant and the Respondent promptly following receipt. The parties shall be given ten days to respond to the report.

If the Respondent accepts the finding and any sanctions by signing a written waiver of a hearing, then no hearing shall be held, and no appeal shall be available. If the Respondent rejects the finding or sanctions, a hearing shall be held to determine responsibility.

College Action:

The Title IX Coordinator shall submit the investigation report and any response from the parties to the Title IX hearing panel promptly after receipt of the parties’ response but no earlier than the expiration of the parties’ deadline to respond.

The Title IX hearing panel shall summon the parties for a hearing to be held within a reasonable time that is at least ten days after the receipt of the investigation report.

After the hearing, the Title IX hearing panel shall determine whether each individual allegation of prohibited conduct occurred using a preponderance of the evidence standard and determine the appropriate disciplinary or corrective action. In making the determination, the Title IX hearing panel shall evaluate all relevant evidence objectively and shall not make credibility assessments based on a person’s status as the Complainant, the Respondent, or a witness. The Title IX hearing panel shall create a written determination regarding responsibility in accordance with law and College procedures within five (5) days following the hearing and submit the determination to the parties simultaneously.

Disciplinary or Corrective Action:

If the Title IX hearing panel determines that prohibited conduct occurred, the College shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct.

Improper Conduct:

If the Title IX hearing panel determines that improper conduct occurred that did not rise to the level of prohibited conduct, the College may take disciplinary action in accordance with College policy and procedures or other corrective action reasonably calculated to address the conduct.

Dismissal of Complaint:

1. Mandatory Dismissal

An allegation presented as a formal complaint under Title IX is subject to the mandatory dismissal procedures under law.

2. Permissive Dismissal

Any complaint may be dismissed at any time on request of a Complainant. The Title IX Coordinator must first assess the request in accordance with this policy.

A complaint may also be dismissed if specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the complaint or allegations.

A complaint may be dismissed if the Respondent is no longer employed by the College.

Notice of Dismissal:

Upon dismissal of a complaint, the Title IX Coordinator or the Title IX hearing panel shall provide the parties written notice of the dismissal.

Live Hearing Procedures:

The College will provide equal opportunity to both sides to present evidence and witnesses, and will provide equal access to any such evidence. Failure of Complainant to appear will result in dismissal of the complaint. Dismissal does not apply in instances where the Title IX Coordinator filed the formal complaint. Reasonable time limits shall be imposed by the College.

The decision-maker at the live hearing will be a panel of three (3) comprised of College employees from a standing committee. The panel will make relevance determinations during cross-examination. Cross-examination is allowed but must be conducted by a third-party advisor or representative; it may not be conducted by the Respondent or Complainant. If a party refuses to be cross-examined, the panel cannot infer guilt, but also cannot rely upon that party's statements. As a general rule, no questions regarding the Complainant's sexual history will be allowed. A preponderance of the evidence burden of proof will apply, and the Respondent will be presumed innocent. Expert witnesses are allowed. The written investigation report will be provided to the hearing panel. The Title IX Coordinator and/or investigator may provide evidence, testimony or clarify any aspect of the written report to the panel at the live hearing. Upon request by either party, the parties will be put in separate rooms for the hearing with technology available to hear the other side.

The panel shall announce its decision in writing simultaneously to both sides and such determination shall explain the rationale for the decision and assign sanctions, if any. This decision shall be reduced to writing within five (5) days of the hearing and provided to both parties simultaneously.

Sanctions:

Possible sanctions for employees include, but are not limited to:

1. **Disciplinary: Implementing any disciplinary measure allowed under College policy, up to and including termination of employment.**
2. **Training: Providing a training and/or education program and/or requiring participation in same.**
3. **Reassignment: Reassignment or change of jobs/job duties, offices or any other work details.**
4. **Criminal Trespass Warning:** If appropriate, employees may be prohibited from entering any KC campus or property.
5. **Other:** Other sanctions or actions described in or allowed by College's policies may be imposed instead of, or in addition to, those specified here. Sanctions may include remedial measures.
6. **Multiple Sanctions:** More than one of the sanctions listed above may be imposed for any single violation.

Appeals:

Either the Complainant or Respondent may appeal a determination of responsibility or dismissal of a formal complaint or individual allegations on the following bases, if those bases affected or could affect the outcome:

1. a procedural irregularity that affects the outcome;
2. new evidence not reasonably available at the time of the determination regarding responsibility or dismissal; and
3. a conflict of interest or bias on the part of the Title IX Coordinator, investigator, or decision maker against a party.

Prohibition of Retaliation:

Retaliation for reporting in good faith prohibited conduct or cooperating with an investigation or disciplinary process related to this policy is prohibited. Retaliation includes adverse action taken against a person for making a good faith complaint or report of prohibited conduct or participating in any proceeding under this policy. Adverse action includes conduct that threatens, intimidates, harasses, coerces, or in any other way seeks to discourage a reasonable person from engaging in activity protected under this policy. Retaliation can be committed by or against any individual or group of individuals, not just a Respondent or Complainant. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of prohibited conduct.

The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting prohibited conduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.