

# 2017-18 Kenyon College Title IX and Intimate Partner Violence Policy

*This is an archived version of the 2017-18 policy. The current policy can be found at [kenyon.edu/title-ix](https://kenyon.edu/title-ix).*

Kenyon College's Title IX and Intimate Partner Violence Policy applies to all forms of sexual and gender-based discrimination, harassment and violence, intimate partner violence, stalking, bullying and retaliation.

## I. PURPOSE AND STATEMENT OF POLICY

The College is committed to fostering a climate free from sexual and gender-based discrimination, harassment and violence, intimate partner violence and stalking through clear and effective policies, a coordinated education and prevention program, and prompt and equitable procedures for resolution of reports of conduct prohibited under this policy. The College encourages all members of its community to participate in the process of creating a safe, welcoming and respectful environment on campus.

Sexual and gender-based discrimination, harassment and violence, intimate partner violence and stalking, in any form, are violations of College and community standards and values, and will not be tolerated at Kenyon. The College is committed to taking all appropriate steps to eliminate prohibited conduct, prevent its recurrence and address its effects. Individuals found responsible under this policy may face disciplinary sanctions up to and including dismissal from the College and/or termination of employment.

The College will not tolerate retaliation against an individual who makes a report or participates in any proceedings under this policy. Kenyon College policy prohibits any form of retaliation and community members engaging in retaliation will be subject to disciplinary action, whether such acts are implicit or explicit, or committed directly or indirectly.

This policy provides the Kenyon community with (1) resources and recourse for individuals who experience prohibited conduct, (2) guidance to a reporting party, complainant, respondent or other affected community members (see note 1 for definitions), (3) Kenyon's expectations for healthy respectful interpersonal interaction and communication, and (4) a procedural outline for addressing behaviors that are counter to Kenyon's mission and prohibited by this policy.

All College proceedings under this policy are conducted in compliance with the requirements of Title IX, the Clery Act, as amended by the Violence Against Women Act, the Family Educational Rights and Privacy Act (FERPA), and state and federal law. No information shall be released from such proceedings except as required or permitted by law and College policy.

## II. SCOPE OF POLICY

This policy applies to all students, faculty, staff, administrators, groups, members of the Board of Trustees, consultants, vendors, others engaged in business with the College, guests and visitors. Every individual is

responsible for acting in accordance with this policy and other College policies and procedures. Any individual can be a reporting party or complainant, even if the complaint the person is making regarding prohibited conduct is against someone who has brought a complaint against that person.

This policy specifically prohibits Sexual Harassment, Sex/Gender Discrimination, Harassment on the Basis of Sex/Gender, Non-Consensual Sexual Intercourse, Non-Consensual Sexual Contact, Sexual Exploitation, Stalking, Physical Harm and Intimidation, Harassment, Bullying and Cyberbullying, Intimate Partner Violence and Retaliation (together, “Prohibited Conduct,” see note 2) against individuals of any gender, gender identity, gender expression or sexual orientation. This policy also prohibits gender-based harassment that does not involve conduct of a sexual nature, including hazing and failure to provide equal opportunities in admissions, employment or athletics.

This policy applies to all forms of Prohibited Conduct that:

- Occur on campus;
- Occur in the context of any Kenyon College education or employment activities and programs;
- Have continuing adverse effects on campus, on any member of the Kenyon College community, or in the context of any Kenyon College education or employment activities and programs, regardless of where the conduct occurred.

Regardless of whether off-campus behavior meets any of the above characteristics, the College may hold individuals and groups responsible for off-campus behavior that is prohibited by the Student, Staff or Faculty Handbooks.

Regardless of when, where or with whom the conduct occurred, the College will offer resources and assistance to any individuals who have been affected by Prohibited Conduct.

### III. NOTICE OF NON-DISCRIMINATION

Kenyon College does not discriminate in its educational programs and activities on the basis of age, race, color, national origin, ancestry, sex, gender, gender identity, gender expression, sexual orientation, physical and/or mental disability, age, religion, medical condition, genetic information, veteran status, marital status, or any other characteristic protected by institutional policy or state, local, or federal law. The requirement of non-discrimination in educational programs and activities extends to employment and admission.

Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Prohibited Conduct under this policy is also prohibited under the Clery Act as amended by VAWA, Title VII of the Civil Rights Act of 1964, Ohio Revised Code Chapter 4112, and other applicable statutes, regulations and administrative code provisions.

## IV. ROLE OF THE TITLE IX COORDINATOR

The College has designated Samantha Hughes as the Title IX Coordinator. The Title IX Coordinator will be informed of all non-confidential reports of Prohibited Conduct, and will oversee the College's centralized review, investigation, and resolution of those reports to ensure the College's compliance with Title IX and the effective implementation of this policy. All references to actions by the Title IX Coordinator may be performed by the Title IX Coordinator or a designee.

The Title IX Coordinator is:

- Knowledgeable and trained in College policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a reporting party, complainant, or respondent about the courses of action, formal or informal, available at the College and in the community;
- Available to provide assistance to any College employee regarding how to respond appropriately to a report of Prohibited Conduct;
- Responsible for monitoring full compliance with all procedural requirements, record keeping and timeframes outlined in this policy;
- Responsible for overseeing training, prevention and education efforts and annual reviews of climate and culture; and
- Responsible for facilitating periodic review of this policy as needed to maintain compliance with state and federal law.
- Inquiries or complaints concerning the application of Title IX may be referred to the College's Title IX Coordinator and/or the United States Department of Education:

Title IX Coordinator

Samantha Hughes

Kenyon College

Eaton North 159

(740) 427-5820 | [hughess@kenyon.edu](mailto:hughess@kenyon.edu)

Office for Civil Rights, Cleveland Office

U.S. Department of Education

1350 Euclid Avenue, Suite 325

Cleveland, OH 44115

(216) 522-4970; (216) 522-2573 (fax) | [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)

## V. PRIVACY AND CONFIDENTIALITY

### A. Definitions

Privacy and confidentiality have distinct meanings under this policy.

**Privacy** generally means that information related to a report of Prohibited Conduct will only be shared with those College employees who “need to know” in order to assist in the active review, investigation, or resolution of the report, including the issuance of interim measures. Kenyon College will determine which employees have a legitimate need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act (FERPA) and will share information accordingly.

Kenyon College may notify the parents or guardians of any dependent students who are respondents regarding conduct charges or sanctions, particularly disciplinary probation, loss of housing, suspension and dismissal.

**Confidentiality** means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual or as otherwise permitted or required by law. These designated professionals have the right to maintain privileged conversations under state law. Confidential resources include medical professionals, mental health professionals, rape crisis or domestic violence counselors and clergy.

## **B. Limits to Confidentiality**

Limits to confidentiality include:

### **1. Mandatory Reporting of Child Abuse**

All Kenyon employees, including confidential resources, are required to immediately report any knowledge or reasonable suspicion that a minor (someone under 18 years old) is experiencing abuse or neglect based on information shared by the minor, any other individual, or one's own observations or knowledge. Any Kenyon employee suspecting abuse or neglect is required to bring all suspicions to the immediate attention of the Director of Campus Safety and the Title IX Coordinator. Kenyon community members who are not employees are strongly encouraged to report any knowledge or reasonable suspicion of child abuse to Campus Safety or to law enforcement. In addition to notifying the Title IX Coordinator and Director of Campus Safety, College employees must make a direct report to the Knox County Children's Services Child Abuse Hotline (24 hours) at (740) 392-5437. View the College's policy regarding the protection of minors on campus.

### **2. Ohio Felony Reporting Requirement**

Under Ohio law, all individuals, excluding confidential resources, must report felonies, including sexual violence. Under Ohio Revised Code Section 2921.22, medical professionals, mental health professionals and clergy are not required to report felonies. This legal requirement means that the Title IX Coordinator or Campus Safety must report any felony to the Knox County Sheriff's Department. Where the College makes a report to law enforcement under this section, the College will not typically share the names of the involved parties without permission from the reporting party. The College will communicate with the reporting party in advance of any report to law enforcement. The reporting party may choose whether and how to participate in any subsequent criminal investigation.

### 3. Ohio Medical Professional Reporting Requirements

In Ohio, medical professionals have distinct legally mandated reporting responsibilities. Where a medical professional knows or has reasonable cause to believe that serious physical harm resulted from an offense of violence, the medical professional is required to make a report to law enforcement. Medical professionals must deem a patient medically stable before reporting and must communicate to the patient that the patient does not have to report and/or speak to the police. If the patient chooses not to speak to police at the time of the medical examination, the medical professional does not need to report the patient's name - only the date, general time, and general location of the incident.

### 4. Risk of Harm to Self or Others

Mental health professionals are required to disclose information where there is an imminent threat of harm to self (the client) or others.

### 5. Clery Act Reporting

Pursuant to the Clery Act, anonymous statistical information for certain offenses that have been reported at campus locations must be shared with Campus Safety. The information does not include the names or any other identifying information about the persons involved in such incidents.

## C. Confidential Resources

The resources designated below can provide counseling, information, and support under confidentiality protections. These confidential resources will not share information about a reporting party, complainant, or respondent (including whether or not that individual has received services) with the Title IX Coordinator or any other employee of the College without the individual's express permission or as permitted or required above (Limits to Confidentiality).

#### **On campus:**

Kenyon College Cox Health and Counseling Center

104 W. Scott Lane, M-F, 8:30 a.m. - 4:30 p.m.

Health Center: (740) 427-5525

Counseling Center: (740) 427-5643

The center offers individual counseling, group counseling and outreach activities, crisis intervention to students and also health services. After business hours, call Campus Safety at (740) 427-5000 and, without disclosing your name, ask to be connected with a counselor or nurse practitioner.

Kenyon College Sexual Misconduct Advisors

24-hour hotline: (740) 358-1544

Kenyon College Peer Counselors

(740) 485-5784

Marc Bragin, College Chaplain  
(740) 427-5228

Rachel Kessler, College Chaplain/Priest-in-charge at Harcourt Parish  
(740) 427-5353

College Whistleblower Hotline  
866-943-5787

**Off campus:**

New Directions: The Domestic Abuse Center of Knox County  
24-hour hotline: (740) 397-4307

Knox County Victims' Assistance  
(740) 397-3404

National Domestic Violence Hotline (NDV)  
(800) 799-7233 (SAFE) | [www.thehotline.org](http://www.thehotline.org)

Rape, Abuse and Incest National Network (RAINN)  
(800) 656-4673 | [www.rainn.org](http://www.rainn.org)

Equitas Health  
(614) 299-2437 | [equitashealth.com](http://equitashealth.com)

BRAVO: Buckeye Region Anti-Violence Organization  
(614) 294-7867 | Weekdays 9 a.m. - 5 p.m.; Sunday-Thursday 6 - 10 p.m.

Ohio Sexual Violence Helpline  
1-844-644-6435 | [oesv.org](http://oesv.org)

Ohio Hispanic Coalition Domestic Violence 24-Hour Hotline  
(614) 746-3534 | [ohiohispaniccoalition.org](http://ohiohispaniccoalition.org)

## VI. PROHIBITED CONDUCT

The College prohibits a broad spectrum of behavior, including all forms of sexual and gender-based discrimination, harassment and violence, stalking, and intimate partner violence. The following conduct is specifically prohibited under this policy:

### A. Sexual Harassment

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted verbal or physical conduct of a sexual nature when one or more of the following conditions are present:

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- Submission to or rejection of such conduct is an explicit or implicit condition of an individual's employment, evaluation of academic work, or any aspect of a College program or activity; or
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive, or persistent as to create an intimidating, hostile, demeaning, or sexually offensive working, academic, residential, or social environment under both an objective and subjective standard.

A single incident of Sexual Harassment alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a pattern of incidents to create a hostile environment. The determination of whether an environment is "hostile" will be based on the totality of the circumstances, including, but not limited to:

- The frequency of the speech or conduct;
- The nature and severity of the speech or conduct;
- Whether the speech or conduct was physically threatening;
- Whether the speech or conduct was demeaning;
- The effect of the speech or conduct on the individual's mental and/or emotional state;
- Whether the speech or conduct was directed at more than one person;
- Whether the speech or conduct arose in the context of other discriminatory conduct;
- Whether the speech or conduct unreasonably interfered with the individual's educational opportunities or performance (including off campus study), Kenyon-controlled living environment, work opportunities or performance;
- Whether a statement is a mere utterance of an epithet that engenders offense in an employee or a student or offends by mere discourtesy or rudeness; and/or
- Whether the speech or conduct is protected by the First Amendment and/or deserves the protections of academic freedom.

Sexual Harassment can take many forms. Sexual Harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated;
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents;
- May be committed by anyone, regardless of gender, age, position, or authority;
- May be committed by a stranger, an acquaintance, or someone with whom the individual has an intimate or sexual relationship;
- May be committed by or against an individual or may be a result of the actions of a group;
- May occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation;

- May occur in the classroom, in the workplace, in residential settings, over electronic media (including the internet, telephone, and text), or in any other setting; and
- May affect the individual and/or others who witness or observe the harassment.

## B. Sex/Gender Discrimination

Discrimination occurs when a behavior or policy has the purpose or effect of restricting or denying an individual's or group's access to opportunities, programs, or resources in relation to sex, gender, gender identity, gender expression, or sexual orientation in a manner that interferes with an individual's working, academic, residential, or social environment or athletic participation or performance.

Examples of discrimination include but are not limited to:

- Treated differently in determining whether such person satisfies any requirement or condition for the provision of any aids, benefits, or services;
- Provided different aid, benefits, or services;
- Provided aid, benefits, or services in a different manner;
- Denied any aids, benefits or services;
- Subjected to separate or different rules of behavior, sanctions or other treatment;
- Treated differently concerning the domicile or residence of a student or applicant;
- Discriminated against by providing significant assistance to any agency, organization or person which discriminates on the basis of sex in providing any aid, benefit, or service to students, faculty or employees;
- Otherwise limited in the enjoyment of any rights, privileges, advantages or opportunities with regard to aids, benefits or services; or
- Treated differently with regard to terms, conditions or benefits of employment, or in the recruitment, consideration or selection thereof.

When these or other forms of discrimination are based on sex, gender, gender identity, gender expression or sexual orientation, the conduct will be resolved under this policy.

Discrimination on the basis of sex/gender in employment is permissible in situations where sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the College. Note that the federal regulations regarding Title IX include certain exceptions, such as single-gender housing, athletic participation and chorus participation, that do not constitute Sex/Gender Discrimination. These limited permissible exceptions, found in Title 34 of the Code of Federal Regulations, Part 106, will be considered when determining whether Prohibited Conduct occurred under this Policy.

## C. Harassment on the Basis of Sex/Gender

Harassment on the basis of sex/gender is any unwanted verbal or physical conduct on the basis of sex or gender when one or more of the following conditions is present:



- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, participation in a program or activity or grade in a course or coursework;
- Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting an individual; or
- Such conduct is sufficiently pervasive, offensive, or abusive to have the purpose or reasonable effect of interfering with an individual's work or educational performance, or creating an intimidating, hostile or offensive work environment, under both an objective and subjective standard. A single incident may create a hostile environment if the incident is sufficiently severe.

The determination as to whether a hostile environment exists is based on the totality of the circumstances, including but not limited to:

- The nature and severity of the conduct;
- The type, frequency and duration of the conduct;
- The identity of and relationship between the respondent and the complainant;
- The number of individuals involved;
- The age and maturity levels of the respondent and complainant; and
- The location of the conduct and the context in which it occurred.

Examples of harassment on the basis of sex/gender include but are not limited to:

- Threatening to "out" a person's gender identity, sexual orientation, gender expression;
- Repeatedly leaving notes/photos, etc. on a person's door that demonstrates homophobia or transphobia;
- Repeated, and unwanted, comments related to a person's appearance and/or demeanor, e.g., "That tight-fitting top really shows off your curves."

#### D. Non-Consensual Sexual Intercourse

Non-Consensual Sexual Intercourse is defined as having or attempting to have sexual intercourse with another individual:

- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated.

Penetrative examples of sexual intercourse include but may not be limited to: vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact or mouth to anus contact.

Non-penetrative examples of sexual intercourse may include, but may not be limited to: exposed genitals rubbing against each other, rubbing one's exposed genitalia against parts of another individual's body, or rubbing another's exposed genitalia.

A finding of responsibility for non-consensual sexual intercourse will result in suspension, dismissal or termination of employment.

### E. Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is defined as having sexual contact with another individual:

- By force or threat of force;
- Without consent; or
- Where that individual is incapacitated.

*Sexual contact* includes any intentional touching of the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner. Sexual contact may be over the clothes or skin-to-skin.

### F. Sexual Exploitation

Sexual Exploitation is knowingly, intentionally or purposefully taking advantage of the sexuality of another person without consent or in a manner that extends the bounds of consensual sexual activity without the knowledge of the other individual for any purpose, including sexual gratification, financial gain, or personal benefit. Examples of Sexual Exploitation include:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Voyeurism;
- Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- Non-consensual recording of individuals in locations in which they have a reasonable expectation of privacy, such as restrooms or locker rooms, regardless of whether the images captured reveal sexual activity or nudity;
- Prostituting another individual;
- Exposing one's genitals in non-consensual circumstances;
- Removal of a condom, without consent, during sexual intercourse;
- Knowingly exposing another individual to a sexually transmitted infection or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity, e.g., by using alcohol or other drugs (such as Rohypnol or GHB).

### G. Stalking

Stalking occurs when a person engages in a course of conduct or repeatedly commits acts toward another person, under circumstances that demonstrate either of the following:

- Placing the person in reasonable fear of bodily injury to oneself or others, or of damage to their property; or
- Reasonably causing substantial emotional distress to the person.

Cyber-stalking is a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used. Cyber-stalking is considered stalking under this policy if it meets either of the conditions above.

### H. Physical Harm and Intimidation

Physical harm and/or intimidation include threatening, or causing physical harm, written or verbal abuse or other conduct that threatens or endangers the health or safety of any person; or implied threats or acts that cause an unreasonable fear of harm in another. These acts may be directed at the individual and/or the individual's property and possessions. When these acts occur in the context of intimate partner violence or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this policy.

### I. Harassment Bullying or Cyberbullying

Harassment, bullying or cyberbullying are defined as repeated and/or severe aggressive behavior likely to intimidate, threaten, or intentionally hurt, control or diminish another person, physically or mentally that includes, but is not limited to: creating web pages with a negative focus; posting insults or lewd photos on social networking sites; and/or spreading rumors with malicious intent. When these acts occur in the context of intimate partner violence or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this policy.

### J. Intimate Partner Violence

Intimate Partner Violence (including dating violence and domestic violence) includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate Partner Violence may include any form of Prohibited Conduct under this policy.

The College will evaluate the existence of an intimate relationship based upon the reporting party's statements and taking in to consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

### K. Retaliation

Retaliation is any real or perceived act or attempt to take an adverse action against or seek retribution from any individual or group of individuals involved in the investigation and/or resolution of a report under this policy. Retaliation can take many forms, including, but not limited to: social aggression, damage to property, abuse, violence, threats, and intimidation.

Retaliation may also include attempting to interfere with an investigation. This may include attempting to influence a witness, trying to alter evidence, and/or presenting knowingly false information in an investigation.

Conduct not typically considered retaliation includes, but may not be limited to, making an allegation of misconduct, filing a complaint, serving as a witness, assisting a complainant or respondent, or otherwise participating in an investigation and/or resolution of alleged conduct as defined in this policy.

Any individual or group of individuals, including but not limited to, a complainant or respondent, can be held accountable for retaliation under this policy.

## VII. RELATED DEFINITIONS AND CONCEPTS

### A. Consent

Individuals who choose to engage in sexual activity of any type with each other must first obtain clear consent. Consent is clear, knowing, and voluntary permission. It can only be given by someone of legal age. Consent is demonstrated through mutually understandable words or actions that clearly indicate a willingness to engage freely in sexual activity. Silence cannot be assumed to indicate consent. Some additional considerations about consent include:

- Each participant in a sexual encounter is expected to obtain and give consent to each act of sexual activity in order for the activity to be considered consensual. Consent to one form of sexual activity does not constitute consent to engage in all forms of sexual activity.
- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. While consent can be given by words or actions, non-verbal consent is more ambiguous than explicitly stating one's wants and limitations. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.
- When consent is requested verbally, absence of any explicit verbal response or a clear non-verbal response constitutes lack of consent. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive. Under this policy, "no" always means "no." "Yes" only means "yes" when it is voluntarily and knowingly given by an individual who has the capacity to give consent.
- If at any time during the sexual activity, any confusion or ambiguity arises as to the willingness of other individuals to proceed, all parties should stop and clarify, verbally, the other's willingness to continue before proceeding with such activity.
- Any party may withdraw consent prior to the completion of the act. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity. Even within the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in sexual activity each time.

- Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise free will to choose whether or not to have sexual contact.
- Individuals who consent to sexual activity must be able to fully understand what they are doing. An individual who is physically incapacitated by alcohol or other drug consumption (voluntarily or involuntarily) or is asleep, fading in and out of consciousness, unconscious, unaware, or otherwise physically helpless is considered unable to give consent. See Incapacitation for further discussion.

In the State of Ohio, the age of majority is 18. Under state law, consent cannot be given by any individual under the age of 16 to participate in sexual activity with an individual over the age of 18. In addition, consent can never be given by minors under the age of 13.

### B. Force

Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request. Consent cannot be obtained by Force.

### C. Coercion

Coercion is the use of unreasonable and persistent pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. Coercion may be emotional, intellectual, psychological or moral.

Examples of coercion include, but are not limited to, threatening to disclose another individual's private sexual information and threatening to harm oneself if the other party does not engage in the sexual activity. Coercing an individual into engaging in sexual activity violates this policy in the same way as physically forcing someone into engaging in sexual activity. Consent cannot be obtained by Coercion.

### D. Incapacitation

An individual who is incapacitated lacks the ability to make informed, rational judgments and cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. In addition, persons with certain intellectual or developmental disabilities may not have the capacity to give consent. Consent cannot be obtained by taking advantage of another individual's Incapacitation.

Where alcohol or other drugs are involved, Incapacitation is a state beyond intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching Incapacitation may include slurred speech, vomiting, unsteady balance, strong odor of alcohol, combativeness, or emotional volatility.

Evaluating Incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; or
- Level of consciousness.

In other words, a person may be considered unable to give valid consent due to Incapacitation if the person cannot appreciate the who, what, where, when, why, or how of a sexual interaction.

Evaluating Incapacitation also requires an assessment of whether a respondent was or should have been aware of the reporting party's Incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the respondent's position.

Being intoxicated or impaired by drugs or alcohol is never an excuse for any Prohibited Conduct under this policy and does not diminish one's responsibility to obtain informed and freely given consent.

## VIII. PROHIBITED RELATIONSHIPS

Relationships in which there is a power differential produce risks for all members of the Kenyon community and undermine the professionalism of faculty and supervisors. Such relationships may raise sexual harassment concerns or suspicions that the person in power is behaving unprofessionally towards the other person in the relationship and towards other people in the classroom or workplace. Third parties may be impacted by the perception of or actual favoritism or special treatment based on the relationship.

Sexual and dating relationships in which one person has a direct supervisory or evaluative role over the other person are unacceptable and constitute personal and professional misconduct, even if both parties purport to consent to the relationship. Because of the inherent power differentials:

Faculty members, coaches and supervisors are prohibited from engaging in sexual or dating relationships with any student; and,

Employees (staff, faculty and administrators) are prohibited from engaging in sexual or dating relationships with anyone under their direct supervision (student or employee).

For the purposes of this prohibition, a 'relationship' includes a single date or sexual encounter. Initiating, attempting to initiate, participating in, or attempting to participate in such a relationship is a violation of this policy and may result in discipline, up to and including termination of employment.

However, the policy also recognizes that spouses and partners of employees may enroll as students at Kenyon. This section is not meant to prohibit pre-existing relationships or to prohibit employee spouses/partners from educational opportunities, but to address prohibited relationships that raise concerns of Prohibited Conduct under this policy. Spouses and domestic partners (as defined for benefits;



more information available in this Human Resources PDF) of a faculty member should avoid enrolling in that faculty member's classes and such relationships should be reported to the Provost. If circumstances require enrollment of one's spouse or domestic partner in a class, then arrangements should be made to have another faculty member evaluate the spouse/partner's work.

A supervisor involved in a relationship with an employee must immediately report that relationship to their own supervisor and must immediately discontinue their supervisory role.

Complaints regarding conflicts of interest or failure to report such spousal/domestic partner relationships that, in the discretion of the Title IX Coordinator in consultation with the Provost and/or Director of Human Resources, do not implicate Prohibited Conduct under this policy will be referred to the Provost (for matters involving faculty) or Director of Human Resources (for matters involving administrators or staff) for appropriate action and will be resolved outside of this policy.

Any individual may raise a concern under this provision, including an aggrieved party outside the relationship prohibited by this provision. Retaliation against persons who report concerns about such relationships is prohibited and constitutes a violation of this policy..

## IX. REPORTING

The College encourages prompt reporting of Prohibited Conduct — in person, by telephone, in writing or by email. At the time a report is made, a reporting party does not have to decide whether or not to request any particular course of action, nor does a reporting party need to know how to identify what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College provides support that can assist a reporting party in making these important decisions, and to the extent possible, will respect a reporting party's autonomy in deciding how to proceed. As explained in greater detail in Section XI.D. (Reporting Party's Request for Anonymity or that No Action/Investigation Be Pursued), the College will balance a reporting party's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

The College encourages all individuals to seek assistance from medical provider(s) and/or law enforcement immediately after an incident of Prohibited Conduct, whether or not the reporting party plans to pursue criminal charges. This is the best option to ensure preservation of evidence and to begin a timely response by law enforcement.

If an individual believes that the Title IX Coordinator has engaged in Prohibited Conduct or has otherwise behaved inappropriately, the individual shall contact the Chief of Staff to discuss the complaint process.

### A. Reporting to Law Enforcement

The Title IX Coordinator or Campus Safety will assist a reporting party, at the reporting party's request, in contacting local law enforcement and will cooperate with law enforcement agencies if a reporting party decides to pursue the criminal process. A reporting party has the right to notify, or decline to notify law

enforcement, under VAWA. Felonies reported to the College (except to confidential resources), however, must be reported to law enforcement by the College, as required by Ohio law (Ohio Revised Code 2921.22). Under most circumstances, the reporting party may decline to participate in a law enforcement investigation.

The College's policy, definitions, and burden of proof may differ from Ohio criminal law. A reporting party may seek resolution through the College's resolution process, may pursue criminal action, may choose one but not the other, or may choose both options. Neither law enforcement's determination whether or not to prosecute a respondent nor the outcome of any criminal prosecution are determinative of whether Prohibited Conduct has occurred under this policy. Proceedings under this policy may be carried out prior to, or concurrent with, civil or criminal proceedings off campus.

At the request of law enforcement, the College may agree to briefly defer its Title IX fact gathering until after the evidence gathering stage of a criminal investigation. The College will nevertheless communicate with the reporting party regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as it is informed that law enforcement has completed its initial gathering of evidence. The College may not, by federal law, wait to address reports of sexual and gender-based harassment and violence until any external legal processes are resolved.

## B. Campus Reporting Options

The College is committed to providing a variety of welcoming and accessible means so that all instances of Prohibited Conduct will be reported.

To enable the College to respond to all reports in a prompt and equitable manner, the College encourages all individuals to report any incident directly to the Title IX Coordinator. However, the College recognizes that a student or employee may choose to report to any trusted employee of the College.

All Kenyon employees (except those who are designated as confidential resources) are considered "responsible employees" under Title IX and are required to share all known information related to a report, including the identities of the parties, with the Title IX Coordinator. In addition, student employees/volunteers who have responsibility for the welfare of other students, including Community Advisors and Diversity Advisors, are required to report all known information. Other student employees who receive information within the context of their jobs are required to report to the Title IX Coordinator.

Civil Rights/Title IX Coordinator

Samantha Hughes

(740) 427-5825 or (740) 427-5820 | [hughess@kenyon.edu](mailto:hughess@kenyon.edu)

Deputy Title IX Coordinator

Linda Smolak

(740) 427-5825 or (740) 427-5245 | [smolak@kenyon.edu](mailto:smolak@kenyon.edu)



Reports can also be made directly to Campus Safety (24-hour availability) during non-business hours.

Office of Campus Safety

Robert Hooper, director

Campus emergency: (740) 427-5555 (24 hours)

Security non-emergency administrative line: (740) 427-5000 or (740) 427-5109

Campus Whistleblower Hotline

1-866-943-5787

### C. Anonymous Reporting

Any individual may make an anonymous report concerning an act of Prohibited Conduct. A report can be made without disclosing one's own name, identifying the respondent, or requesting any action.

Depending on the level of information available about the incident or the individuals involved, anonymous reporting may limit the College's ability to respond or take further action.

Anonymous reports can be submitted through the College's website. Follow-up communications with the person submitting the anonymous report are not possible unless contact information is provided.

As with all other reports, anonymous reports will be shared with the Title IX Coordinator. Where there is sufficient information, the College will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

Employees who have a duty to report information to the Title IX Coordinator under this policy may not make such reports anonymously.

### D. Protection of Minors

All College employees, including confidential resources, are required to immediately report any knowledge or reasonable suspicion of child abuse or neglect to the Title IX Coordinator and the Director of Campus Safety. In Ohio, a child is defined as anyone under 18. In addition to notifying the Title IX Coordinator and Director of Campus Safety, College employees must make a direct report to:

Knox County Children's Services Child Abuse Hotline

24-hour hotline: (740) 392-5437

The source of abuse does not need to be known in order to file a report, nor is there a requirement that there is actual evidence of abuse before making a report.

[View the College's policy regarding the protection of minors on campus.](#)

### E. Reporting Considerations

#### 1. Timeliness of Report

In order to maximize the College's ability to respond promptly and effectively, all those impacted by Prohibited Conduct are encouraged to report as soon as possible. There is no time limit on reporting

violations of this policy, though prompt reporting by responsible employees is expected. If the reporting party or respondent is no longer a student or employee at the time of the report, the College may not be able to take disciplinary action against the respondent, but it will still seek to meet its Title IX obligation by providing support for the reporting party and taking other appropriate action to eliminate, prevent and address the effects of the Prohibited Conduct. The College will also assist a reporting party in identifying external reporting options.

## 2. Amnesty for Personal Use of Alcohol or Other Drugs

The College seeks to remove barriers to reporting. The College will offer any student who reports or experiences Prohibited Conduct limited immunity from being charged for policy violations related to the personal ingestion of alcohol or other drugs, provided that any such violations did not and do not place the health and safety of any person at risk. The College may choose, however, to pursue educational or therapeutic remedies for those individuals.

# X. INTERIM MEASURES

## A. Overview

Upon receipt of a report of Prohibited Conduct, the College may impose reasonable and appropriate interim measures designed to eliminate the reported hostile environment and protect the parties involved. Interim measures may be both remedial (designed to address either party's well-being and continued access to educational and employment opportunities) or protective (involving action against a responding party). Remedial measures are available regardless of whether the reporting party chooses to pursue any action under this policy. The Title IX Coordinator will maintain the privacy of any interim measures provided under this policy to the extent possible and will promptly address any violation of the protective measures.

A reporting party or respondent may request separation or other protection, or the College may choose to impose interim measures at its discretion to maintain the safety of all parties, eliminate a hostile environment, and/or protect the integrity of the process. The Title IX Coordinator will oversee and implement the provision of interim measures and remedies. If an interim measure involves immediate removal of the respondent from campus, the Title IX Coordinator will consult with the appropriate division head who would not typically serve as the adjudicator (i.e., Dean of Students for students, Senior Associate Provost for faculty and Vice President of Finance for staff). The Title IX Coordinator has the discretion to ensure the appropriateness of any interim measure based on all available information, and is available to meet with a reporting party or respondent to address any concerns about the provision of interim measures.

All individuals are encouraged to report concerns about the failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented interim measure and disciplinary sanctions may be imposed for failing to abide by a College-imposed measure.

## B. Range of Interim Measures

Potential interim measures, implemented on behalf of the reporting party and/or the respondent to the extent reasonably available and warranted by the circumstances, include, but are not limited to:

- Access to counseling services and assistance in setting up an initial appointment, both on and off campus
- Imposition of a “no-contact order” (failing to abide by the no-contact order may result in allegations of additional policy violations)
- Rescheduling of exams and assignments
- Providing alternative course completion options
- Change in class scheduling, including the ability to transfer course sections or withdraw from a course without penalty
- Change in work schedule or job assignment
- Change in student’s College-owned, sponsored or controlled housing
- Assistance from College support staff in completing housing relocation
- Limiting an individual’s or organization’s access to certain College facilities or activities pending resolution of the matter
- Voluntary leave of absence
- Providing an escort to ensure safe movement between classes and activities
- Providing medical services
- Providing academic support services, such as tutoring
- College-imposed administrative leave or separation
- Interim suspension (in consultation with the appropriate division head as described in Section X(A))
- Providing assistance with obtaining information about visa or immigration issues, legal issues and transportation options
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

## C. College Imposed Interim Suspension

The Title IX Coordinator, in consultation with the Dean of Students, may impose interim (temporary) suspension of a student prior to the formal investigation or resolution of an alleged violation of College policy and/or pending the outcome of the resolution of a report whenever a student’s or group’s actions and/or activities are viewed as threatening or potentially injurious to the well-being or property of members of the Kenyon College community or to the property or orderly functions of Kenyon College. An individual or group may be required to curtail or modify behavior and/or activities prior to the investigation or formal resolution of alleged violation of policies whenever these behaviors and/or activities are viewed as threatening or potentially injurious to the well-being or property of members of the Kenyon community or to the property or orderly functioning of the College. An interim suspension is not disciplinary in nature and is not recorded on the respondent’s transcript.

Similarly, the Title IX Coordinator in consultation with the appropriate division head who would not typically serve as the adjudicator (i.e., Dean of Students for students, Senior Associate Provost for faculty and Vice President of Finance for staff) may impose leave for any employee at their discretion prior to the formal investigation or resolution of a report. Such leave will be structured at the College's discretion in consultation with the appropriate department head.

## XI. TITLE IX REVIEW, INVESTIGATION AND RESOLUTION OPTIONS

The College's response to reports under this policy will be guided by principles of fairness and respect for all parties. In every case, the College will conduct a Title IX Assessment and determine the most appropriate manner of resolution under the policy. Resources are available for both students and employees, whether as a complainant or respondent, to provide guidance throughout the investigation and resolution of the report. Both respondents and complainants are entitled to an advisor of their choice throughout the process. The Title IX Coordinator will provide the complainant and the respondent with an overview of available resources and options at their first meeting.

Withdrawal, resignation, graduation, retirement, or other departure of a complainant or respondent from the College after a Title IX report has been made will not discontinue the review, investigation, and/or resolution of the report or complainant. A respondent who separates from the College under any circumstance is not eligible for re-admittance or re-employment until they have successfully completed the terms of any sanctions imposed.

### A. Procedural Expectations: Complainant and Respondent

In any report, assessment, investigation or resolution under this policy, both a complainant and a respondent can expect:

1. A prompt and equitable response to reports of Prohibited Conduct.
2. To receive interim measures that may be reasonably available and necessary for protection and support.
3. Information about where to find confidential resources on and off campus and other forms of support available through the College and in the community.
4. Notice of the alleged conduct, potential policy violations at issue and the identity of the complainant, which may be the College, prior to the start of a formal investigation.
5. An adequate, reliable, thorough and impartial investigation.
6. The opportunity for an advisor of choice who may attend all meetings and proceedings related to the assessment, investigation or resolution of the report.
7. Agency and autonomy to decline to participate in an investigation or resolution under the policy, although the College may choose to continue the process even if the complainant and/or respondent do not participate.
8. To identify witnesses and provide evidence during the investigation.
9. Prompt remedial action if Prohibited Conduct is determined to have occurred.
10. Regular communication about the progress of the process and of the resolution.

11. Timely written notice of the outcome, and sanctions, and the rationale for each.
12. The opportunity to appeal the outcome (determination as to responsibility) and sanction.
13. To be free from retaliation, harassment, or intimidation relating to this policy.
14. Reasonable accommodation for individuals with disabilities can be requested through established College protocol as provided by the Americans with Disabilities Act and/or Section 504 of the Rehabilitation Act.

## B. Initial Title IX Assessment

Upon receipt of a report, the Title IX Coordinator will conduct an initial Title IX assessment to provide an integrated and coordinated response to reports under this policy. In the course of this initial assessment, the Title IX Coordinator will consider the interest of the reporting party and their expressed preference for the manner of resolution, as well as the College's broader obligation to maintain a safe campus free from harassment and discrimination. Where possible, the College will seek to resolve reports under this policy in a manner consistent with the reporting party's request.

As part of the initial assessment, the Title IX Coordinator will:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety & emotional well-being;
- Notify the reporting party of the right to contact law enforcement, to decline to contact law enforcement, and to seek medical treatment;
- Advise the reporting party that even if they decline to contact law enforcement, the College may be required to report the incident to law enforcement under Ohio law (and under most circumstances, the reporting party may decline to participate in a law enforcement investigation);
- Inform the reporting party of the importance of preservation of evidence (i.e., medical, forensic, physical, electronic, etc.);
- Enter the incident into the College's daily crime log, if appropriate (without identifying information);
- Evaluate whether to issue a timely warning consistent with the Clery Act;
- Provide the reporting party with information about on and off-campus resources;
- Notify the reporting party of the range of interim measures;
- Provide the reporting party with an explanation of the procedural options under the policy, including Informal Resolution and Formal Resolution;
- Notify the reporting party of the ways they may choose to participate, or decline to participate, in the various steps of the process. This will include notification that the Title IX Coordinator may, in certain circumstances, proceed without reporting party's participation and that non-participation by the reporting party may limit the ability of the College to respond;
- Assess for pattern evidence or other similar conduct by respondent;
- Discuss the reporting party's expressed preference for manner of resolution and any barriers to proceeding;
- Explain the College's policy prohibiting retaliation; and

- If the determination has been made to notify the respondent of the report, provide the respondent with information about resources, possible interim measures, and procedural options.

The initial review will proceed to the point at which a reasonable assessment of the safety of the individual and of the campus community can be made, and the Title IX Coordinator has sufficient information to determine the appropriate manner of resolution.

At the conclusion of the Title IX assessment, the Title IX Coordinator, will determine the appropriate manner of resolution. If the reported information would not support a violation of Prohibited Conduct, accepting all reported information as true, the Title IX Coordinator may decline to pursue an investigation, and, when appropriate, refer the incident to the relevant College office. It is at the discretion of the Title IX Coordinator to determine which method of resolution is appropriate.

The Title IX Coordinator will communicate the decided upon manner of resolution to the reporting party in writing. Depending on the circumstances and requested resolution, the respondent may or may not be notified of the report or resolution. A respondent will be notified when the action would impact a respondent, such as protective measures that restrict the respondent's movement on campus, the initiation of an investigation or the decision to involve the respondent in a formal process. If an investigation is initiated, the respondent and complainant will be informed of the nature of the alleged conduct and/or potential charges being investigated.

### C. Advisor of Choice

Both complainants and respondents may be supported by an advisor of choice during the resolution of a report under this policy. The advisor may be an attorney. Any person who serves as an advisor should be available for meetings, telephone calls, and/or video calls throughout the process. The advisor is a silent and non-participating presence who is there solely to observe and provide support during the investigative process. The College has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. Prior to participating in any meeting, the advisor will be required to meet with or speak with the Title IX Coordinator (or designee) for an orientation to the College's policies and procedures, privacy protections and expected participation and decorum. The complainant or respondent may be present for this meeting. The advisor may not be a fact witness or otherwise have any conflicting role in the process.

### D. Reporting Party's Request for Anonymity or that No Action/Investigation Be Pursued

The Title IX Coordinator will take all reasonable steps to investigate and respond to the report consistent with the reporting party's request where possible. Where a reporting party makes a report but requests that a name or other identifiable information not be shared with the respondent or that no formal action be taken, the College's ability to respond may be limited by the request. The College will balance this request with its dual obligation to provide a safe and non-discriminatory environment for all Kenyon College community members.

In making this determination, the Title IX Coordinator will consider, among other factors:



- Whether the reporting party has requested confidentiality or will participate in an informal or formal process;
- The severity and impact of the conduct;
- The respective ages of the parties, including whether the reporting party is a minor (under the age of 18);
- Whether the respondent has admitted to the conduct;
- Whether there have been other complaints or reports of harassment or violence under this policy;
- Whether circumstances suggest there is an increased risk of the respondent committing additional acts of sexual violence or other violence;
- Whether the respondent threatened further sexual violence or other violence against the reporting party or others;
- Whether the report indicates that multiple respondents were involved;
- Whether the report indicates that the conduct was perpetrated with a weapon, by force or by coercion; and
- Whether the school possesses independent means to obtain relevant evidence (e.g., witnesses, security cameras or personnel, or physical evidence).

Where the College is unable to take action consistent with the request of the reporting party, the Title IX Coordinator will inform the reporting party about the chosen course of action, which may include the College initiating an investigation into whether a policy violation occurred. Alternatively, the course of action may include a form of Informal Resolution, which will include steps to eliminate the effects of the Prohibited Conduct and prevent its recurrence that do not involve formal disciplinary action against a respondent or revealing the identity of the reporting party.

### E. Informal Resolution

The Informal Resolution process is designed to eliminate a hostile environment without taking formal disciplinary action against a respondent. Where the initial assessment concludes that Informal Resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the reporting party's access to the educational, co-curricular and employment activities at the College and to eliminate a hostile environment.

Participation in Informal Resolution is voluntary, and either party can request to end Informal Resolution at any time. Pursuing Informal Resolution does not preclude later use of Formal Resolution if the Informal Resolution fails to achieve a resolution acceptable to the parties and the College, or if the informal agreement is violated. The Title IX Coordinator may refer a report for Formal Resolution at any time and retains the discretion to determine the type of Informal Resolution that may be appropriate in a specific case.

As part of Informal Resolution, the Title IX Coordinator may:

1. Resolve the report through the implementation of remedies when there is sufficient information about the nature and scope of the conduct to support such a response.
2. Act promptly to meet with the parties involved to inform them of the corrective actions.

Remedies may include any option outlined in Section X: Interim Measures. Other potential remedies include targeted or broad-based educational programming or training, supported direct confrontation of the respondent and/or indirect action by the Title IX Coordinator or the College. Depending on the form of resolution, it may be possible for a reporting party to maintain anonymity.

The College will offer mediation for appropriate cases, but will not compel a reporting party to engage in mediation, to directly confront the respondent, or to participate in any particular form of Informal Resolution. Mediation may not be used to resolve a report of Non-Consensual Sexual Intercourse. By state law, mediations are confidential. The parties and the Title IX Coordinator will sign a written document outlining any agreed upon resolution. The mediation will not be final until the parties and the Title IX Coordinator sign this document. The Title IX Coordinator may serve as the mediator. If the mediated agreement includes disciplinary probation, suspension, or dismissal, this will be recorded in the respondent's disciplinary record.

At the discretion of the Title IX Coordinator, after an investigation or Formal Resolution of a report has begun, a complainant and respondent may agree to pursue Informal Resolution.

The Title IX Coordinator will maintain records of all reports and conduct referred for Informal Resolution, which will typically be completed within thirty (30) calendar days of the initial report. When the respondent is a student, an Informal Resolution will not be recorded in the respondent's student file in the Dean of Students Office, unless the respondent agrees to have it recorded. When the respondent is an employee, a notation will be made in the employee's file maintained by the Office of Human Resources and/or the Provost's Office.

## F. Formal Resolution

Where the Title IX Coordinator concludes that Formal Resolution is appropriate, the College will initiate an investigation. The Title IX Coordinator will identify the potential violations and prepare the initial notification of charges. Any non-Title IX conduct charges will be determined in consultation with the appropriate administrator (Director of Student Rights and Responsibilities, Human Resources Director, or Provost) and will be investigated and, if appropriate, adjudicated and/or appealed pursuant to this policy, provided that it does not unduly delay resolution under this policy.

### 1. Investigation

The complainant and respondent will receive written notice that an investigation has been initiated. The notice of investigation will identify the parties, a concise summary of the conduct, and the potential policy violations. The Title IX Coordinator, in consultation with the investigators, may amend the charges as part of the investigative process. The Title IX Coordinator will, if appropriate, issue amended charges to both parties.



The Title IX Coordinator will designate two investigators to conduct an adequate, reliable and impartial investigation, one of whom will be a College employee. Any investigator used by the College must have specific training and experience investigating reports of Prohibited Conduct. The College may engage an external investigator as one of the two assigned investigators. The investigators will be impartial and free of any actual conflict of interest. In complex situations, the Title IX Coordinator, in consultation with the two investigators, may engage additional trained investigators to gather additional information to be considered by the primary investigators in the resolution of the complaint.

The investigators will interview the complainant and the respondent to understand the details of the reported incident. The investigators, in their discretion, will conduct other fact finding and/or discussions with any other individuals who may have information relevant to the determination. The investigators will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate. Audio and/or video recording of interviews is prohibited under the policy unless there is a special need for the recording and it has been approved in advance by the Title IX Coordinator.

The complainant and respondent will have an equal opportunity to be heard; submit questions for the investigators to ask of the other party; submit information and evidence; and identify witnesses who may have relevant information. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character.

All parties and witnesses are expected to provide truthful information. Knowingly providing false or misleading information is a violation of College policy and can subject a student or employee to disciplinary action. Making a good faith report to the College that is not later substantiated does not constitute false or misleading information.

The investigators and Title IX Coordinator have the discretion to consolidate multiple reports against a respondent into one investigation in the interests of efficiency based on the relationship between the witnesses, incidents, and/or evidence. Where multiple complainants are involved in the same investigation, each complainant will be provided only with the appropriate portion(s) of the investigative documents that relate to their individual complaint.

A person's medical and counseling records are privileged and confidential documents that a complainant or respondent will not be required to disclose to investigators. However, where a party chooses to share medical and counseling records as part of the investigation, the records will be shared with the other party.

In gathering the facts, the investigators may consider similar prior or subsequent reports of, or findings of responsibility for, similar conduct by the respondent to the extent such information is relevant. The determination of relevance for pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of

similar Prohibited Conduct. Prior or subsequent conduct of the respondent may also be considered in determining other relevant issues, including knowledge, intent, motive, or absence of mistake.

The sexual history of the complainant and respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history of either of the parties is generally not relevant to the determination of a policy violation and will only be considered in very limited circumstances. For example, if the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether consent was sought and given during the incident in question. However, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent to another sexual act, and consent on one occasion does not, by itself, constitute consent on a subsequent occasion. In addition, under very limited circumstances, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report.

Any party seeking to introduce information about prior sexual history or pattern evidence should bring this information to the attention of the investigators at the earliest opportunity. While the investigators may explore relevant areas of inquiry, the Title IX Coordinator has the discretion to make the final determination whether evidence of prior sexual history or other misconduct is relevant to the determination regarding responsibility.

At any time, the respondent may choose to agree to a finding of responsibility to some or all of the charged conduct. The matter will be referred to an Adjudicator to determine the appropriate sanction as set forth below:

The College will seek to complete the investigation within forty-five (45) calendar days from the notice of investigation, but this time frame may be extended for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may include the complexity 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. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

## 2. Review of Investigation and Initial Investigative Report

At the conclusion of the investigation, the investigators will prepare a preliminary written investigation report that summarizes the relevant information gathered and synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts. In preparing the report, the investigators will:

- Review all facts gathered to determine whether the information is relevant given the allegation;
- Redact information that is irrelevant, more prejudicial than probative, immaterial, and/or information relating to any mediation that may have occurred between the parties;

- Redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty;

The Title IX Coordinator will share the initial investigative report with the complainant and respondent to provide each the opportunity for review before the report is finalized. Due to the privacy of all those involved, shared documents will not be printable, downloadable or sharable by the parties. Exceptions may be made in compliance with Section 504.

The complainant and respondent may submit any additional comments, witnesses, evidence or follow-up questions to the investigators within five (5) business days of the opportunity to review the report. Upon receipt of any additional information by the complainant or respondent, or after the five (5) business day period has lapsed without comment, the investigators will conduct any additional follow-up that they deem appropriate.

### 3. Determination of Responsibility

The investigators will make a determination, by a preponderance of the evidence, whether there is sufficient information to support a finding of responsibility. The investigators finding, and the rationale for the finding, will be included in the final investigative report which will be shared with the complainant and the respondent by the Title IX Coordinator. The preponderance of the evidence is the standard whereby all relevant and admissible information is found to support, more likely than not, the allegations. A preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

If the investigators determine by a preponderance of the evidence that there is insufficient information to find the respondent responsible for violating this or other policies, the case will be dismissed. The complainant may appeal this outcome following the procedures set forth in Section E (Appeals).

If the investigators determine, by a preponderance of the evidence, that there is sufficient information to find the respondent responsible for violating this or other policies, the matter will be referred to an Adjudicator to determine the appropriate sanction. The Title IX Coordinator will notify the Registrar to place a hold on the respondent's transcript until the sanction has been issued by the Adjudicator.

If the investigators determine, by a preponderance of the evidence, that there is sufficient information to find the respondent responsible for Non-Consensual Sexual Intercourse, the respondent will be immediately placed on interim suspension, the restrictions of which will be determined by the Title IX Coordinator on a case-by-case basis. Interim suspension for other findings will be determined on a case-by-case basis.

### 4. Adjudicator

The Adjudicator is determined by the status of the respondent:

- For reports against students or student groups, the Adjudicator is typically the Director of the Office of Student Rights and Responsibilities, or, if the Director is unable to serve, the Assistant Director of Student Rights and Responsibilities.
- For reports against staff, the Adjudicator is typically the Director of Human Resources or, if the Director of Human Resources is unable to serve, the Director of Student Rights and Responsibilities.
- For reports against faculty, the Adjudicator is typically the Provost or, if the Provost is unable to serve, one of the Associate Provosts.

The Adjudicator must be a neutral and impartial decision-maker. The parties will be informed, in writing, of the specific Adjudicator assigned to determine sanction. Within 1 business day of receiving the notice of referral to adjudication, the complainant and the respondent may submit a written request to the Title IX Coordinator to replace the named Adjudicator, if there are reasonable articulable grounds to establish bias, conflict of interest or an inability to be fair and impartial. A designated Adjudicator will only be replaced if the Title IX Coordinator concludes that their bias precludes impartiality. Additionally, Adjudicators who have reason to believe they cannot make an objective determination must recuse themselves.

#### 5. Sanctions

In determining the appropriate sanctions, the Adjudicator will:

- Afford the complainant and the respondent the opportunity to submit a written impact/mitigation statement to the Adjudicator for consideration within 3 business days of the notice of referral to adjudication;
- Consider a sanction(s) designed to eliminate the Prohibited Conduct, prevent its recurrence, and address its effects, while supporting the College's educational mission and Title IX obligations;
- Impose any sanction deemed appropriate after a consideration of all of the relevant information.

The Adjudicator will impose a sanction based upon a full consideration of the following factors: (1) the respondent's prior conduct history; (2) how the College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the respondent has accepted responsibility for their actions; (7) whether the evidence, in conjunction with the prior conduct history, suggests that the respondent is reasonably likely to engage in the same or similar conduct in the future; (8) the need to deter similar conduct by others; and (9) any other mitigating or aggravating circumstances, including the College's values.

The imposition of sanctions will typically take effect immediately, but may be stayed at the discretion of the Adjudicator in consultation with the Title IX Coordinator. A respondent who separates from the College under any circumstance is not eligible for re-admittance or re-employment until they have successfully completed the terms of any sanctions imposed.

A transcript notation of Suspension or Dismissal will be noted at the time the sanction is imposed. If an appeal reverses the decision, the notation will be removed.

(a) Sanctions for Students or Student Groups

For students, the sanction may include removal from specific courses or activities, removal from College housing, suspension from the College, or dismissal. While sanctions may be of a punitive nature, they are intended to be educational as well. The possible sanctions that may be issued, individually or in combination, for students found responsible for Prohibited Conduct include:

- *Statement of Concern.* May be issued to students who are found in the presence of a policy violation, but who are not held formally accountable for that violation.
- *Warning.* A warning is notification that a student has committed certain violations and that continuance of such conduct will result in more severe disciplinary action.
- *Educational Sanctions.* These include but are not limited to education, mandatory counseling assessment and adherence to professional counseling recommendations, research paper or project, hall or building program with a residential life staff member, group education program, etc.
- *Administrative Hold on Student Accounts.* Enforced most often when students have failed to comply with assigned tasks from an adjudication or Title IX investigation. This action precludes students from registering for classes and obtaining such documents as transcripts and diplomas. Once the outstanding sanction has been satisfactorily completed, the hold will be lifted.
- *Disciplinary Service.* Service hours expected to be completed in a given area as a way to give back to the campus or local community.
- *Fine/Restitution.* A fine or restitution is a monetary penalty for violations such as vandalism or damage to College property or the property of others. All fines must be paid by personal or cashier's check; they will not be applied to a student's account.
- *College Restriction.* Restriction from certain buildings, events, activities, etc.
- *College Housing Restriction.* Residence re-assignment, removal from College housing, or restrictions on type of housing where a student may live.
- *Disciplinary Probation.* This sanction means that for a specified period of time (ordinarily no less than the equivalent of one semester) a student is not in good standing with the College.
- *Administrative Withdrawal.* Withdrawal from a specific course, major, or academic department may be invoked in cases where a student or group of students violates expectations of the academic arena (classroom incivility, disruption, harassment of faculty or other students in the classroom).
- *Deferred Suspension.* This involves students who have been held responsible for behavior that warrants suspension but where mitigating circumstances and additional sanctions may allow a student to remain in the community while these sanctions are being completed. Failure to complete any of the additional expectations by the stated deadlines will lead to the immediate

implementation of suspension without further hearing. In addition, if a student is found responsible for any further College policy violations, at minimum, the student will automatically be recommended for suspension for at least one full semester.

- *Suspension.* The denial of the opportunity to continue in the College for a specified period of time (ordinarily no less than one semester), or indefinitely until the student's intervening record can support an application for readmission. While suspended, a student is not allowed to be on campus or to attend any official College event. The intent is for the student to have time away from the College to consider the implications of their behavior and to return to campus with a better understanding of their responsibility within the community. In the event that additional sanctions are imposed in conjunction with the suspension, these sanctions will most likely be expected to be completed prior to an application for readmission to be considered. This sanction is noted permanently on the student's transcript.
- *Dismissal.* The denial of the opportunity to continue as a student at the College. A student who has been dismissed is not eligible to apply for readmission. A student who is dismissed is not allowed to be on campus or to be at any official College event at any time. This sanction is noted permanently on the student's transcript.

For a student employee who is acting within the scope of their employment at the time of the incident, the sanction may include any permissible sanction as a student or an employee.

#### (b) Sanctions for Employees or Employee Groups

For employees, the sanction may include any form of responsive action or progressive discipline as set forth in the Employee Handbook, including training, referral to counseling and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination of employment.

#### (c) Sanctions for Faculty or Faculty Groups

For faculty, the sanction may include any form of disciplinary action as set forth in the Faculty Handbook, including a warning, a reprimand, referral to counseling, salary freeze, removal from certain responsibilities (e.g, supervising employees), paid leave, unpaid leave, non-renewal of contract, termination of tenure and/or termination of employment.

### 6. Timeframe for Resolution

The College will seek to complete the adjudication (imposition of sanction) within ten (10) calendar days of the notice of referral to adjudication, but this time frame may be extended for good cause with written notice to the parties of the delay and the reason for the delay.

### 7. Notice of Outcome

The Adjudicator's written determination of the outcome, the sanction and the rationale for each will be provided to the complainant and respondent by the Adjudicator. The complainant and respondent will be informed of any sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements.

The outcome letter will also provide each party with their appeal options. If, under extenuating circumstances, there are any changes to the outcome, both parties will be simultaneously notified at the earliest possible time. The College may also notify appropriate College officials, including a direct supervisor of a sanction, as necessary to implement the outcome and/or sanctions.

### G. Appeal

A complainant and respondent may each appeal the outcome, including the investigators' finding of responsibility (or no responsibility). In a request for an appeal, the burden of proof lies with the party requesting the appeal. Dissatisfaction with the outcome of the investigation is not grounds for appeal. The limited grounds for appeal are as follows:

- procedural error(s) that materially affected the outcome;
- new information unavailable at the original proceeding, which shall be set forth in the appeal; or
- the decision of the investigators and/or adjudicator was clearly erroneous based on the evidential record.

The Appeals Officer is determined by the status of the respondent:

- For students, the Appeals Officer is the Vice President for Student Affairs or, if the Vice President cannot serve, the Provost.
- For faculty, the Appeals Officer will be the Vice President for Student Affairs or, if the Vice President cannot serve, the Director of Human Resources.
- For staff, the Appeals Officer is the Vice President for Student Affairs or, if the Vice President of Student Affairs cannot serve, the Provost.

A complainant or respondent must submit a written appeal to both the Title IX Coordinator and Appeals Officer within five (5) business days of receipt of the Notice of Outcome. The written appeal must include the specific basis for the appeal and any information or argument in support of the appeal.

Upon receipt of the appeal, Title IX Coordinator will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted within three (3) business days from the other party's receipt of the appeal.

The Appeals Officer will make a decision regarding the written appeal and, within ten (10) business days of receipt of all appeal documents, notify the complainant and the respondent of the outcome. The Appeals Officer may:

- Affirm the finding(s);
- Alter the finding(s);

- Alter the sanctions; or
- Request that additional steps be taken.

Appeal decisions are final. In compliance with FERPA, access to all initial and final investigative reports will be removed once the appeals process has been completed.

All appeal deadlines may be extended for good cause by the Title IX Coordinator. Any extension will be communicated to the other party.

## XII. RECORDS

Records will be maintained regarding the report, the investigation, evidence presented during the disciplinary process, the outcome of the disciplinary process, the outcome of any appeal, and any temporary and permanent remedies put in place by the College to address the Prohibited Conduct. Such records will be maintained by the Title IX Coordinator and, if a student is found responsible for conduct prohibited by this policy, by the College for at least nine years after the last party graduates, leaves the employment of the College, or otherwise is no longer a student or employee. Such records will be accessible only to the extent permissible under applicable records confidentiality and disclosure laws, including the Family and Educational Rights and Privacy Act, 20 U.S.C. 1232g, and the Clery Act, 20 U.S.C. 1092(f).

## XIII. EDUCATION AND PREVENTION PROGRAMS

Kenyon College recognizes that the most effective way to achieve a community free of sexual and gender-based discrimination, harassment, violence, intimate partner violence and stalking is to equip all community members with the skills to recognize and prevent these prohibited forms of conduct. The College is also committed to the protection of minors and the prevention of child abuse.

Throughout the year the College offers educational programs to promote awareness of sexual and gender-based harassment and violence, stalking and intimate partner violence. Prevention programs include an overview of the College's policies and procedures, relevant definitions, including Prohibited Conduct, consent, discussion of the impact of alcohol and illegal drug use, safe and positive options for bystander intervention, and information about risk reduction. Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation.

Kenyon College offers regular primary prevention programs and ongoing education and awareness programs for all students and employees. Employees who play a key role in implementing the policy, including those faculty and staff who are likely to receive reports of Prohibited Conduct will receive regular in-depth training to ensure a timely, sensitive, respectful, and effective institutional response. The College is committed to ensuring that all employees understand how to respond to these reports of this nature.

The Title IX Coordinator is responsible for oversight, coordination, and assessment of prevention and training programs on campus, in collaboration with appropriate departments and personnel.

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## NOTES

1. When used in this policy, reporting party refers to either the individual making a report but not the target of the incident(s) or to the person making a report who was the target of the incident(s). A complainant refers to the party/parties who was/were the target of the reported incident(s). In addition, the College may serve as a complainant. The person who is the target of the behavior may participate in all aspects of the process, including the appeal, when the College serves as the complainant. The term “complainant” is used when a Formal Investigation is being pursued. A respondent refers to the individual(s) accused of Prohibited Conduct.

2. Prohibited Conduct encompasses many forms of sexual misconduct, as the term was defined under prior Kenyon policies. Prohibited Conduct reflects the broader range of conduct covered by this policy, which includes sexual misconduct, intimate partner violence, stalking and retaliation.