

KALAMAZOO VALLEY COMMUNITY COLLEGE
SEXUAL MISCONDUCT AND HARASSMENT POLICY
September 2023

I. Policy Statement

Members of the College community, guests, and visitors have the right to be free from all forms of gender and sex-based discrimination including sexual harassment and acts of sexual assault, domestic violence, dating violence, sexual exploitation, stalking, and other conduct of a sexual nature that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education programs and activities. All members of the College community are expected to conduct themselves in a manner that does not infringe upon the rights of others. No employee, student or other person shall engage in sexual misconduct or harassment as defined by this policy. Upon actual notice, the College will take prompt and effective steps to end such conduct, prevent its recurrence, and remedy any discriminatory effects on the victim and others as appropriate. These steps can include sanctions and disciplinary action up to and including termination of employment for employees, and expulsion for students. The policy applies to any violation that occurs during or in a College education program or activity.

This policy applies to all members of the College community, including students, administrators, managers, supervisors, staff, faculty, customers, vendors, or others who conduct business with the College or who visit any College campus. This policy applies regardless of gender or any other characteristic protected under the College's Non-Discrimination and EEO Policies. It also applies to any person participating in a College-sponsored program on or off KVCC property.

In accordance with the procedures set forth below, KVCC will investigate and address any and all complaints of conduct prohibited by this policy. The College will also provide appropriate programming to promote the awareness of sexual misconduct and harassment for all employees, and incoming students. This program will include information regarding safe and positive options for bystander intervention and information on risk reduction.

The College prohibits retaliation, including retaliatory harassment. Retaliation against any person for alleging sexual misconduct or harassment, for making a complaint under this policy, or for participating in an investigation of such a complaint is also a violation of KVCC policy. Any person who retaliates against a person who engages in protected activity under this policy will be subject to disciplinary action up to and including termination of employment for employees, and expulsion for students.

Additionally, knowingly making false allegations of a violation of this policy or providing evidence with the knowledge that it is false is also a violation of this policy and will subject a person to appropriate disciplinary action. When analyzing a reported false complaint, the following will be considered: (i) the state of mind of the individuals accused of making a false complaint; (ii) whether the false

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complaint was intentional; (iii) any decision to recant; (iv) fear of retaliation; (v) mental health concerns; and (vi) other relevant factors.

Any person who believes that he or she has been subjected to a violation of any part of this policy should immediately report such incident(s) in accordance with the “Reporting Options and Resources” section of this policy (Section IV). Discrimination that does not constitute sexual harassment as defined in this policy will be reviewed under the College’s Anti-Discrimination Policy.

II. Reason for Policy

Sexual misconduct and harassment, including dating violence, domestic violence, sexual exploitation, sexual assault, and stalking, violates the law, undermines the integrity of the College, traumatizes individuals, creates tension in the workplace and academic environment, and causes friction between employees and/or students.

KVCC is committed to maintaining a positive learning and working environment for students, faculty and staff. All forms gender-based discrimination, including sexual misconduct and harassment detract from a positive environment and are absolutely prohibited. Such conduct unreasonably interferes with an individual’s work or educational performance and/or can create an intimidating, hostile or offensive work or learning environment.

KVCC attempts to maintain a professional and ethical educational environment. It is essential that those who are in positions of authority not abuse the power with which they are entrusted.

III. Related Documents

A. College Documents:

1. Student Handbook
2. Annual Security Report
3. Employee Handbook

B. Laws and Regulations:

1. The Elliott-Larsen Civil Rights Act
2. Title IX of the Education Amendments of 1972
3. Title VI of the Civil Rights Act of 1964
4. Title VII of the Civil Rights Act of 1964

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5. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act
6. Violence Against Women Reauthorization Act of 2013
7. Part 106 of Title 34 of the Code of Federal Regulations

IV. Contacts

- A. Title IX Coordinator: Dannie Alexander, 269-488-4434, dalexander@kvcc.edu
- B. Student Relations Coordinator: Russ Panico, 269-488-4393, rpanico@kvcc.edu
- C. Director of Human Resources: Amy Reynolds, 269-488-4576, areynolds2@kvcc.edu
- D. Director of Public Safety: Sean Gordon, 269-488-4341, sgordon@kvcc.edu

V. Definitions

- A. Sexual Misconduct:** Sexual misconduct is a broad term that includes but is not limited to sexual violence including dating violence, domestic violence, stalking, sexual assault and sexual exploitation.
- B. Sexual Harassment:** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 1. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; or
 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education programs and activities; or
 3. Sexual Misconduct.

Sexual harassment can be verbal, nonverbal, or physical conduct on the basis of sex. A person's subjective belief alone that behavior is offensive does not necessarily mean the conduct rises to the level of a policy violation. The behavior must be objectively offensive to meet the definition of prohibited sexual harassment. In determining whether behavior is sexual harassment, the totality of the circumstances must be considered. Sexually harassing conduct often involves a pattern of offensive behavior. A single incident may also constitute sexual harassment, depending on the severity of the conduct, the type of conduct, and the relationship between the parties.

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Examples of sexual harassment can include and are not limited to (if severe or pervasive enough): making sexual propositions or pressuring employees or students for sexual favors; touching of a sexual nature; writing graffiti of a sexual nature; displaying or distributing sexually explicit drawings, pictures, or written materials; performing sexual gestures or touching oneself sexually in front of others; telling sexual or dirty jokes; spreading sexual rumors or rating employees or students as to sexual activity or performance; or circulating or showing e-mails or Web sites of a sexual nature. Behavior of a discriminatory or sexual nature that does not rise to sexual harassment as defined above may nonetheless be unprofessional, inappropriate, and prohibited under the policy and other College policies and could warrant discipline.

C. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic, sexual, or intimate nature with the victim that does not fall within the definition of “domestic violence.” For the purposes of this definition:

1. Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
2. The existence of a social relationship of a romantic or intimate nature with the victim is determined by a variety of factors including:
 - a. The reporting party’s statement;
 - b. The length of the relationship;
 - c. The type of relationship; and
 - d. The frequency of interaction between the persons involved in the relationship.

D. Domestic Violence: A felony or misdemeanor crime of violence committed by any of the following individuals:

1. A current or former spouse or intimate partner of the victim; or
2. A person with whom the victim shares a child in common; or
3. A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or
4. A person similarly situated to a spouse of the victim under the domestic or family laws of the jurisdiction in which the crime of violence occurred; or
5. Any other person against an adult or youth victim who is protected under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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E. Sexual Assault (Including Rape): Having or attempting to have sexual intercourse, penetration, or sexual contact with another individual:

1. By force or threat of force;
2. Without affirmative consent; or
3. Where that individual is incapacitated.

F. Sexual Exploitation: Occurs when a person takes or attempts to take non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

1. Invasion of sexual privacy;
2. Prostituting another person;
3. Non-consensual recording or photographing of sexual activity or a person's intimate parts (including genitalia, groin, breasts or buttocks);
4. Allowing third parties to observe private sexual activity (such as letting your friends hide in the closet to watch you having consensual sex);
5. Engaging in voyeurism;
6. Knowingly transmitting an STD or HIV to another person;
7. Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
8. Causing the incapacitation of others for the purpose of compromising that person's ability to give affirmative consent to sexual activity;
9. Sexually-based stalking and/or bullying

G. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. KVCC considers acts of cyber stalking, the use of electronic devices and technology to make contact, recording or transmitting sexual images, and voyeurism to be a violation of this policy.

1. A "course of conduct" is two or more acts directed at a specific person or persons, 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. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

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- H. Sexual Intercourse:** includes 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.
- I. Sexual Contact:** includes intentional contact with 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.
- J. Reasonable person:** is a legal term that courts generally define as a prudent, hypothetical person with ordinary sensitivities who embodies a community ideal of reasonable behavior.
- K. Affirmative Consent:** is informed (knowing), voluntary (freely given), unambiguous, and active (not passive), meaning that through the demonstration of clear words or actions a person has indicated permission to engage in mutually agreed-upon sexual activity and the consenting person is not incapacitated as defined by this policy.

Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed "no" or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or

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sexual activity does not, by itself, imply consent to future acts. It is important not to make any assumptions.

L. 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. For the use of force to be demonstrated, there is no requirement that a Complainant resist the sexual advance or request. However, resistance by the Complainant will be viewed as a clear demonstration of non-consent.

M. Incapacitation: is a state where an individual cannot make an informed and rational decision to engage in sexual activity because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, otherwise unaware that sexual activity is occurring, unable to understand the nature of sexual activity due to mental disease or condition ("mentally incapable"), or under duress, deception, coercion, or force.

Incapacitation may result from the use of alcohol and/or other drugs. Consumption of alcohol or other drugs, impairment, inebriation or intoxication are insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's:

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

Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person.

In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. **If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forego or cease any sexual contact or activity.**

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual and gender based harassment and violence, intimate partner violence, or stalking and does not diminish one's responsibility to obtain consent.

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- N. Employee:** Anyone employed by KVCC, including all faculty, staff, and administrators, full or part time.
- O. Supervisor & College Official:** Anyone who oversees directs or evaluates the work of others, including but not limited to, managers, Board of Trustee Members, volunteers, administrators, independent contractors, coaches, directors, deans, department heads, program directors, counselors, advisors, coordinators, persons who manage student workers as well as faculty members in their role as instructors, and as participants in decisions affecting the careers of other faculty members.
- P. Students:** Anyone who has been issued a student number at Kalamazoo Valley Community College and who is:
1. currently enrolled, or
 2. admitted and shows intent to enroll, or
 3. withdrawn from a specific course or the College after allegedly violating the Student Code
- Q. Complainant:** Any person who is the reported victim of an act or conduct that may violate this policy.
- R. Formal Complaint:** A document filed and signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate a report of sexual misconduct or harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a College program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or electronically. A complainant may withdraw his or her formal complaint at any time. During the College's initial interview with a Complainant, whether the reported violation of misconduct was provided to the College by the Complainant or a third party, the College will provide the Complainant with information about the formal investigation process and a copy of the policy and will request the Complainant confirm the desire to move forward with a formal investigation. Discrimination, including gender discrimination, which is not sexual harassment will not be reviewed under the formal complaint process.
- S. Respondent:** Any person who is reported to have violated this policy.
- T. Response:** In cases where it is determined that a policy violation occurred KVCC will take appropriate disciplinary action with or without concurrence from the complainant.

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U. Retaliation: To intimidate, threaten or coerce, or otherwise discriminate against any individual for exercising their right to file a good faith complaint of a violation of this policy or to participate in an investigation of an alleged violation. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others. Retaliatory conduct is illegal and constitutes a violation of this policy, and will be grounds for disciplinary action up to and including termination or expulsion.

V. College Program or Activity: Includes locations, events, or circumstances within the United States over which the College exercises substantial control over the context in which the sexual misconduct or harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College. Further, a program or activity can include conduct that occurs off campus in the context of College employment, education, or research programs or activities, including but not limited to, internships, graduated and professional programs, athletics, clubs, other affiliated programs, or conduct that occurs off campus but has continuing adverse effects on campus or in any College program or activity.

VI. Constitutional Protections

This policy shall not be interpreted to restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution, deprive a person of any right that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendment, or restrict any other rights guaranteed against government action by the U.S. Constitution. The protections of the First Amendment will be considered in complaints involving speech or expressive conduct. Speech or expressive conduct that constitutes sexual harassment is not protected speech of the proper exercise of academic freedom.

VII. Reporting Options and Resources

Complainants have the right, and can expect, to have complaints taken seriously by KVCC when reported, and to have those incidents investigated and properly resolved through the procedures within this policy. Respondents have the right, and can expect, to be provided notice of a formal complaint and an opportunity to respond to the allegations before action is taken against a Respondent. Information will be only shared as necessary with investigators, witnesses, the Respondent, and appropriate KVCC officials. Employees with access to this information are charged with preserving a Complainant's and Respondent's rights and privacy to the extent reasonable in the context of conducting an adequate, reliable, and impartial investigation.

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A. Reporting Options: All individuals are encouraged to promptly report conduct that may violate this policy to KVCC. In addition, all individuals are encouraged to report conduct that may also violate criminal law to both KVCC and to local law enforcement. These processes are not mutually exclusive. Any student, employee, or third party who seeks to make a complaint or report may:

- Make an internal complaint/report to the Title IX Coordinator, Student Relations Coordinator, or Director of Human Resources;
- Contact the Department of Public Safety for assistance in filing a criminal complaint and preserving physical evidence; and/or
- Contact local law enforcement to file a criminal complaint.

Complainants may pursue some or all of these steps at the same time (e.g., one may simultaneously pursue an internal complaint and a criminal complaint). When initiating any of the above, Complainants need not know whether they wish to request any particular course of action, nor how to label what happened. Choosing to make a complaint, and deciding how to proceed after making the complaint, can be a process that unfolds over time. Before or during this decision-making process, Complainants and other reporting persons are encouraged to seek support and information from a Confidential Resource.

KVCC has a strong interest in supporting individuals impacted by sexual misconduct and harassment. Reasonably available interim measures are available and may be imposed that take into account the known facts and circumstances, the existence of a potentially hostile environment, and the interests of both the Complainant and Respondent. More information about interim and supportive measures is set forth in Section VIII of the policy.

B. Complainant Autonomy Not to Proceed: Where a Complainant requests that the Complainant's name or other identifiable information not be shared with the Respondent, that no investigation occur, or that no formal action be taken, KVCC will balance this request with its obligations to provide a safe and non-discriminatory environment for all College community members, including the complainant or person who reported the incident, and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a Respondent.

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KVCC's Title IX Coordinator will consider the following in evaluating requests for confidentiality, that no investigation occur, or that no formal action be taken:

1. The nature and scope of the alleged conduct, including whether the reported misconduct involves the use of a weapon;
2. The Complainant's wish to pursue disciplinary action;
3. The respective ages and roles of the Complainant and Respondent;
4. The risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
5. Whether there have been other reports of harassment or misconduct by the Respondent;
6. Whether the Respondent threatened further sexual violence or other violence against the Complainant or others;
7. Whether the report reveals a pattern of harassment or misconduct at a given location or by a particular group such that there is an increased risk of future acts of sexual violence under similar circumstances;
8. Whether KVCC possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence);
9. Considerations of fundamental fairness with respect to the Respondent should the course of action include disciplinary action against the Respondent; and
10. KVCC's obligation to provide a safe and non-discriminatory environment.

KVCC will take reasonable steps to investigate and respond to the complaint consistent with the Complainant's request to maintain anonymity or not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the College determines that action should be taken that is inconsistent with the request of the Complainant, the Title IX Coordinator will inform the Complainant about the chosen course of action, which may include the College initiating disciplinary action against a Respondent with the Title IX Coordinator as the named Complainant. Alternatively, the course of action may also include steps to limit the effects of the alleged conduct and prevent its recurrence that do not involve disciplinary action against a Respondent or disclosing the identity of the Complainant.

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C. Privacy and Confidentiality: KVCC is committed to protecting the privacy of all individuals involved in a report of sexual misconduct or harassment. All College employees who are involved in the College's Title IX response, including the Title IX Coordinator and investigators, receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report. Further, as a public institution, the College has obligations under state law to produce public records upon receipt of a proper request. It is also possible that the information gathered during an investigation will be subject to subsequent legal or administrative proceedings which will require disclosure of the contents and results of the investigation.

Privacy and confidentiality have distinct meanings under this policy.

1. *Privacy:* Privacy generally means that information related to a report of misconduct will only be shared with a small circle of individuals, including, but not limited to, the Complainant, Respondent, the parties' advisors, key College stakeholders, and law enforcement. The use of this information is limited to those KVCC employees who are directly involved in the resolution of a report under this policy. While not bound by legally-privileged confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.
2. *Confidentiality:* Confidentiality means that information shared by an individual with designated campus or community professional **cannot** be revealed to any other individual without express permission of the individual. Those campus and community professionals who can hold legally-privileged conversations recognized by law include medical providers, mental health providers, ordained clergy/pastoral counselors and rape crisis counselors. These individuals are prohibited from breaking confidentiality without express permission of the individual seeking services, unless there is an imminent threat of harm to self or others, or the conduct involves suspected abuse of a minor. When a report involves suspected abuse of a minor under the age of 18, these confidential resources are required by state law to notify child protective services and/or local law enforcement.

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D. Confidential Resources: The following Confidential Resources are also available to individuals seeking assistance:

The following Confidential Resources are available to individuals seeking confidential assistance:

- Counselors located at the Student Success Center @ 269-488-4040.
- Off campus community resources, including rape crisis counselors, domestic violence resources, local state assistance agencies, ordained clergy/pastoral counselors.
- Guardian: 800-386-7055; <https://worklife.uprisehealth.com/>

KVCC employees who are Confidential Resources may submit anonymous statistical information for Clery Act purposes, but will not otherwise share identifying information without the permission of the Complainant. Confiding in a Confidential Resource does not trigger an investigation or other action by KVCC.

E. Responsible Employees: Certain employees are designated as Responsible Employees. Under Title IX, KVCC is required to take immediate and corrective action if a Responsible Employee has actual knowledge about sexual misconduct or harassment prohibited under Title IX. A Responsible Employee includes any employee who has the authority to take corrective action to redress sexual misconduct or harassment.

KVCC requires that all Responsible Employees immediately report allegations of violation of this policy to the Title IX Coordinator or designee, who will contact the Complainant. This connects a Complainant to information and resources and enables the College to take appropriate action to eliminate, prevent and address any hostile environment that may exist. The following officials have been designated as Responsible Employees for complaint reporting purposes:

- The Title IX Coordinator and any Deputy Coordinator
- Public Safety Officers and Employees
- Human Resources Administrators
- President, Executive Vice Presidents, Vice Presidents
- Department Chairs and Directors, Deans, and other Academic unit heads

Responsible Employees will safeguard an individual's privacy and only share information with a small circle of individuals who are directly involved in the resolution of a report under this policy. Responsible Employees are nonetheless required by KVCC to immediately share all known details of the incident (date, time, location), the names of the parties involved, and a brief description of the incident with the Title IX Coordinator or designee in person, by telephone or by email.

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F. Other Employee Reporting Obligations. The College designates many KVCC employees as mandatory reporters under its own policies. The College strongly encourages individuals affected by discrimination, including sexual harassment or misconduct to talk to someone and obtain support services. The College requires most College employees to bring any reports of violations of this policy to the attention of the Title IX Coordinator and public safety. Mandatory reporters must report details of the incident (date, time, location), the names of the parties involved, and a brief description of the incident with the Title IX Coordinator or designee in person, by telephone or by email.

Students and employees should be aware of the reporting options available to them so they can make informed choices about disclosing details of an incident. Individuals who choose to discuss an incident only in a privileged/confidential setting should understand the College cannot conduct an investigation into the incident, or pursue disciplinary action, unless the incident is reported to the Title IX Office. However, counselors and advocates who are able to maintain confidentiality will still assist their clients in receiving support services, regardless of whether or not a report is made.

VII. Reporting: Additional Considerations

A. Timeliness and Location of Incident: All individuals are encouraged to report sexual misconduct and harassment as soon as possible in order to maximize KVCC's ability to respond promptly and effectively. KVCC does not, however, limit the time frame for reporting. If the Respondent is not a member of the College community at the time of the report, KVCC will still provide reasonably available support for a Complainant, but its ability to investigate and/or take action may be limited. KVCC will, however, assist a Complainant in identifying external reporting options.

An incident does not have to occur on campus to be reported to KVCC.

B. Anonymous Reporting: Any individual may make an anonymous report concerning an act of sexual misconduct or harassment. Individuals may report the incident without disclosing their name, identifying the parties involved or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, KVCC's ability to respond to an anonymous report may be limited. An anonymous report may be made by email at: anonymousreporting@kvcc.edu; or by telephone at: 269-488-4434.

The Title IX Coordinator will receive the anonymous report and determine any appropriate steps in light of the available information. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may impact KVCC's ability to respond or take further action. Where there

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is sufficient information, KVCC will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

C. Amnesty for Alcohol or Other Drug Use: To encourage reporting, individuals who in good faith report conduct prohibited by this policy, either as a Complainant or a witness, will not be subject to disciplinary action by KVCC for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. KVCC may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

D. Coordination with Law Enforcement: KVCC encourages Complainants and Respondents to pursue their rights under Michigan law regarding claims of prohibited conduct that may also violate state law. The College will offer assistance to involved parties by directing them to law enforcement agencies regarding criminal reports and cooperating with law enforcement agencies. A Complainant has the right to notify, or decline to notify, law enforcement. In the context of sexual assault, domestic violence, dating violence and stalking federal law mandates that it is an adult Complainant's option to notify or decline to notify law enforcement.

KVCC's policy, definitions and burden of proof may differ from Michigan criminal law. The parties involved may seek recourse under this policy and/or pursue their rights under Michigan law. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

KVCC may defer its Title IX fact gathering until after the initial stages of a criminal investigation. KVCC will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. KVCC will promptly resume its Title IX fact gathering, if any additional fact gathering is necessary, as soon as it is informed that law enforcement has completed its initial investigation.

VIII. Interim and Supportive Measures:

Any individual who reports sexual misconduct or harassment can be assured that all reports will be investigated and resolved in a fair and impartial manner. All individuals involved can expect to be treated with dignity and respect. In every report under this policy, KVCC will make an immediate assessment of any risk of harm to the Complainant or to the broader campus community and will take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.

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Interim measures will be designed to protect the parties involved. The provision of interim measures may be imposed at any time regardless of whether disciplinary action is sought by the Complainant or KVCC. Interim measures will be kept private to the extent that maintaining that privacy does not impair the ability of KVCC to provide the interim measures.

Interim Measures are initiated based on information gathered during a report and are not intended to be permanent resolutions; hence, they may be amended or withdrawn as additional information is gathered. The Title IX Coordinator/investigator, in consultation with other administrators, will maintain consistent contact with the parties so that all safety, emotional, and physical well-being concerns can be reasonably addressed.

Specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. KVCC will consider the following factors in determining what interim measure to take, including, for example, the specific needs expressed by the Complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the Complainant; whether the Complainant and Respondent share the same class, transportation, or job location; and whether other judicial measures have been taken to protect the Complainant (e.g., civil protection orders). Interim measures will be imposed in a way that minimizes the burden on the Complainant to the extent possible while still balancing the rights of the Respondent. If interim measures are imposed, KVCC will make every effort to avoid depriving any student of his or her education.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. KVCC will take immediate and responsive action to enforce a previously implemented measure.

Interim measures will be implemented at the discretion of KVCC and may change over time. Potential remedies, which may be applied to the Complainant and/or the Respondent, include:

- Imposition of a mutual “No Contact” order
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sanctions
- Change in work schedule or job assignment
- Providing academic support services, such as tutoring
- Interim suspension or KVCC-imposed leave

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- Counseling
- Campus escort services
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy

No Contact Order: A campus no-contact order is issued by a KVCC official and requires that an individual have no contact with a particular person or persons. Contact is considered any verbal, written, electronic, non-verbal gesture, third party messages, indirect loud talking in the vicinity of the person and could include indirect actions that appear to KVCC to be intimidating. KVCC may add to the terms of no contact within the context of the reported incident that preceded the order or concerns that have arisen during the investigation or conduct process. The determination to impose a no-contact order will be made on a case-by-case basis and will take into account the request of the Complainant.

Interim Suspension or Separation: Where the report of prohibited conduct poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal KVCC functions, KVCC may place a student or student organization on interim suspension or impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other KVCC activities or privileges for which the individual might otherwise be eligible, as the College determines appropriate. When interim suspension or leave is imposed, KVCC will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

IX. Resolution Options and Procedures

A. Overview of Options: Upon receipt of a complaint or report or a complaint, the Title IX Coordinator or designee will conduct an initial Title IX assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual misconduct and harassment. As described in greater detail below, the assessment will consider the nature of the report, the safety of the individual and of the campus community, the Complainant's expressed preference for resolution, and the necessity for any interim measures, remedies or accommodations to protect the safety of the Complainant or the community, and the appropriate considerations for the Respondent.

At the conclusion of the assessment, the Title IX Coordinator will determine the appropriate course of action, which may include informal/voluntary resolution that does not involve disciplinary action against a Respondent, or a formal investigation

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to determine if there has been a policy violation, and if so, whether sanctions are warranted. The specific procedures in determining responsibility following an investigation will be determined by the role of the Respondent (e.g., student, employee, faculty member). Whether sanctions are warranted against the Respondent, the nature of any sanction(s), and any potential appeal of such sanctions will be determined in accordance with the Handbook applicable to the Respondent (i.e. Student or Employee). All procedures are guided by the same considerations of fairness and equity. In determining whether this policy has been violated, KVCC will apply the preponderance of the evidence standard (more likely than not).

Resources are available for both students and employees, whether as Complainants, Respondents or third parties, to provide support and guidance throughout the investigation and resolution of the complaint.

Throughout the process, the Complainant and the Respondent have the option to have one other individual (which may be legal counsel) to act as an advisor who may be present at any meeting or interview related to the investigation or a subsequent disciplinary proceeding or appeal hearing. However, in an investigation interview or hearing, the Complainant and the Respondent must answer questions directly. The advisor may not provide statements or answer questions.

During an interview, an advisor is a silent and non-participating presence who is there solely to observe and provide support during the investigative process. The Complainant or Respondent may, however, request that to speak to their advisor privately in a nearby room. Neither the Complainant nor the Respondent or their advisors may take photographs or make audio or video recordings. Prior to participating in any meeting, the advisor may be required to meet with a KVCC administrator for an orientation to KVCC's policies and procedures, privacy protections and expected participation/decorum. The advisor may not be a fact witness or otherwise have any conflicting role in the process. During an investigation hearing, the advisor will be tasked with cross-examining a party and can ask questions.

B. Title IX Assessment: When a report is made, the Title IX Coordinator or designee (which may be a Deputy Title IX Coordinator) will conduct an initial Title IX assessment. If the conduct alleged in a complaint would not constitute sexual harassment even if proved, it did not occur in the United States, or it did not occur in a College program or activity, KVCC must dismiss the complaint for the purposes of Title IX. However, the College reserves the right to continue its investigation or impose discipline under this policy or other College policies for gender-based discrimination, harassment, or misconduct. In the course of this assessment, KVCC will consider the interest of the Complainant and the Complainant's expressed preference for manner of resolution. As outlined in this

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policy regarding the Complainant's autonomy not to proceed, where possible and as warranted by an assessment of the facts and circumstances, KVCC will seek action consistent with the Complainant's request.

As part of the initial assessment of the facts, KVCC will:

- Assess the nature and circumstances of the report;
- Address immediate physical safety and emotional well-being;
- Notify the Complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist the Complainant with notifying law enforcement;
- Notify the Complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence;
- Notify the Complainant of the importance of preservation of evidence;
- Assess the reported conduct for any necessary actions under the Clery Act, including inclusion in the daily crime log, annual security report, or issuance of a timely warning;
- Provide the Complainant and Respondent, if notified, with information about: on and off-campus resources, the range of interim accommodations and remedies, and an explanation of the procedural options;
- Inform the Complainant and Respondent that if the allegations involve conduct that could constitute a crime each may have an advisor of their choosing, which may include an attorney (at their own expense), colleague, or other person they identify, unless the advisor is a witness in the investigation; as noted above, the role of the advisor is to support the Complainant or Respondent, not to speak on behalf of or for them during any part of the process;
- Assess for pattern evidence or other similar reported conduct by Respondent;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding; and
- Explain KVCC's policy prohibiting retaliation.

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The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and KVCC has sufficient information to determine the best course of action.

At the conclusion of the Title IX Assessment, the Title IX Coordinator or designee (which may be a Deputy Title IX Coordinator) will determine the appropriate manner of resolution. KVCC may: 1) pursue informal/voluntary resolution that does not involve disciplinary action against a Respondent; or, 2) initiate a formal Investigation to determine if there has been a policy violation, with either a named Complainant or as requested by the Title IX Coordinator. If there is a determination that a policy violation has occurred, whether sanctions are warranted and, if so, the nature of the sanction(s) will be determined by the appropriate person(s) in accordance with the applicable handbook, policy and/or procedure based on the role of the Respondent. The determination as to how to proceed will be communicated to the Complainant in writing, which may include an email.

C. Informal/Voluntary Resolution: Informal/voluntary Resolution is designed to eliminate any environment of harassment or misconduct by taking alternative actions that do not involve disciplinary action against a Respondent. Where the Title IX assessment concludes that informal/voluntary resolution may be appropriate, KVCC will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational, extracurricular, employment and other activities at KVCC and to eliminate any hostile environment. Participation in informal/voluntary resolution by a Complainant is voluntary, and a Complainant can request to end informal/voluntary resolution at any time.

Informal/voluntary resolution is typically used when a Complainant requests anonymity, does not consent to participation in an investigation, or the alleged conduct, even if it does not rise to the level of a policy violation, suggests the need for remedial, educational or preventive action. Depending on the form of informal/voluntary resolution used, it may be possible for a Complainant to maintain anonymity.

When informal/voluntary resolution is utilized, a Complainant can still request interim and supportive measures. Other potential remedies include targeted or broad-based educational programming or training, supported direct confrontation of the Respondent and/or indirect action as determined by KVCC.

KVCC may also offer mediation and other informal resolution options for appropriate cases, instead of a formal investigation, but will not compel a Complainant or Respondent to engage in mediation and will allow either party to withdraw from the informal process and resume a formal investigation. Prior to

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instituting such a process, KVCC will obtain the voluntary, written consent of both parties. Mediation may never be used in cases of sexual misconduct or harassment where the Complainant is a student and the Respondent is an employee. The decision to use or offer informal/voluntary resolution will be made when KVCC has sufficient information about the nature and scope of the conduct, which may occur at any time.

- D. Investigation:** KVCC will designate an investigator(s) of its choosing. The investigator will typically be the Title IX Coordinator, a Deputy Title IX Coordinator, or a member of the Human Resources Department designated by the Title IX Coordinator, although the investigator may be any appropriately designated and trained employee of KVCC or an external investigator engaged to assist KVCC in its fact gathering. KVCC may defer its investigation to law enforcement if they are conducting a criminal investigation. Any investigator chosen to conduct the investigation must be impartial and free of any actual conflict of interest and must have specific training and experience investigating allegations of sexual and gender-based harassment or violence. Either party can advise the Title IX Coordinator of any concern of conflict or impartiality at the start of the investigation process.

The investigation will be thorough, impartial and fair. All individuals will be treated with sensitivity and respect and provided an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns. All parties and witnesses are expected to provide truthful information. Knowingly providing false or misleading information is a violation of KVCC policy and can subject a party or witness to disciplinary action. The investigator or designee will provide timely updates, as appropriate or requested, about the timing and status of the investigation.

It is the responsibility and burden of KVCC, not the parties, to gather relevant evidence, to the extent reasonably possible. The investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case. The investigator will coordinate the gathering of information from the Complainant, the Respondent, and any other individuals who may have information relevant to the determination.

Before conducting interviews of either the Complainant or Respondent, KVCC will provide written notice to the party of the date and location of the interview including: (a) the identities of the parties involved; (b) the specific section of the policy allegedly violated; (c) the conduct allegedly constituting a potential violation; and (d) the date and location of the alleged incident(s). KVCC will provide all parties with sufficient time to prepare to participate. The Respondent will receive written notice at least ten (10) business days in advance of the interview in order to allow

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that party to prepare for meaningful participation in the interview. In matters where the Title IX Coordinator is pursuing an investigation without a named Complainant, the Respondent will be provided the identity of the party involved, only if known to the Title IX Coordinator. However, the Title IX Coordinator reserves the right to investigate matters without knowledge of an individual's identity.

The investigator will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate. The Complainant and Respondent will have an equal opportunity to inspect and review any evidence obtained as part of the investigation, be heard, to submit information, and to 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. The investigator will determine the relevancy of any proffered information, and will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait, including honesty.

Medical and counseling records of a Complainant or Respondent are privileged confidential records that individuals are not required to disclose. However, these records may contain relevant and material information and a party may voluntarily choose to share such records with the investigator. Any records provided by a party become part of the file and are available to review by the opposing party.

In gathering information, the investigators may consider other allegations of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant and available. Such information may be relevant to prove motive, intent, absence of mistake, pattern or another material fact.

In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence during an investigation. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges that consent was given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will only be permitted under very limited circumstances, for example, to explain an injury or physical finding.

Any party seeking to introduce information about prior sexual history of the Complainant or prior misconduct by the Respondent should bring this information to the attention of the investigator at the earliest opportunity. KVCC, through the investigator, may choose to consider this information, with appropriate notice to

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the parties. With respect to pattern evidence or prior sexual history of either party, the investigator, in consultation with the Title IX Coordinator, will assess the relevance, form, and reliability of the information (hearsay will not be permitted) and determine if it is appropriate for consideration in the determination of responsibility. Evidence regarding a pattern of behavior of the Respondent or the sexual history of either party will be allowed only if it is directly relevant to a disputed fact.

The investigator and Title IX Coordinator have the discretion to consolidate multiple reports against a Respondent into one investigation and resolution if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident.

- E. Review of Investigation:** At the conclusion of the investigation, the investigator will prepare a written report that impartially summarizes the complaint, details the relevant information gathered, identifies the potential policy violations and synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts. In preparing the report, the investigator will review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. Before the report is finalized, the Complainant and Respondent will be given the opportunity to review a draft investigative report that contains all information relied upon in reaching a determination. A Complainant and Respondent will be provided no less than ten (10) days to submit any additional comment or evidence to the investigators upon receipt of the draft investigative report.

After the ten (10) day comment period has lapsed with or without comment, the investigator will prepare a finalized investigative report, incorporating any comment and provide the report to Complainant, Respondent and the final decision maker for hearing and/or final determination.

- F. Live Hearing Process:** When there is a formal complaint has sexual harassment or misconduct, KVCC must provide for a live hearing at the request of either party. A decision maker shall be designated, who shall not be the investigator, by the Title IX Coordinator to conduct the hearing. The hearing will be held in real time, either in-person or virtually, and shall be recorded or transcribed. The recording or transcription will be made available to either party upon request. At the request of either party, the hearing will be conducted with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or witness answering questions.

At the hearing, the decision maker must permit each party, through an advisor, to ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility. A party is prohibited from directly cross examining another party. If a party does not have an advisor,

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KVCC will provide an advisor (who may or may not be an attorney), at no cost.

Prior to answering a question, the decision maker must determine whether the question is relevant and can exclude a question, upon explanation as to why the question is irrelevant. In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence during a hearing, unless offered to prove that someone other than the Respondent committed the conduct reported or where there is a current or ongoing relationship between the Complainant and the Respondent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties concerning consent.

If a party or witness does not submit to cross-examination at the live hearing, the decision maker must not rely on any statement of that party or witness in reaching a final determination, provided, however, that the decision maker cannot draw an inference about the determination based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

G. Final Determination: With or without a hearing, before reaching a determination, the decision maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited, follow-up questions from each party. The decision maker may exclude irrelevant questions, upon explanation of any decision to exclude a question as irrelevant. The decision maker will then simultaneously issue a written determination regarding responsibility to the parties. The written determination must include (i) identification of the allegations potentially constituting a policy violation; (ii) a procedural section describing the steps taken from receipt of complaint to final determination; (iii) findings of fact supporting the determination; (iv) conclusions regarding the application of the policy to the facts; (v) a determination as to each allegation; (vi) any disciplinary sanction imposed on the Respondent, as determined by the disciplinary authority; (vii) any remedies or continued measures provided to the Complainant (viii) the procedures and bases for either party to appeal.

H. Imposition of Sanctions: KVCC will use its best efforts to complete its investigation and impose sanctions, if warranted, in a reasonably prompt manner, although the time frame may be extended for good cause. Good cause may exist for a variety of factors, including the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for KVCC breaks or vacations, or to address other legitimate reasons. Both the Complainant and Respondent will be notified of any delay, the reason for the delay, and an anticipated time frame.

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Whether sanctions are warranted and, if so, the nature of the sanction(s) will be determined by the appropriate person(s) (“the disciplinary authority”) in accordance with the applicable handbook, policy and/or procedure based on the role of the Respondent (Student or Employee). In all cases, the sanction(s) will be designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting KVCC’s educational mission and Title IX obligations, and while considering the impact on both the Complainant and the Respondent. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

The disciplinary authority may consider the following factors:

- the nature and violence of the conduct at issue;
- the impact of the conduct on the Complainant;
- the impact or implications of the conduct on the community or KVCC;
- prior misconduct by the Respondent, including the Respondent’s relevant prior disciplinary history, both at KVCC or elsewhere, and any criminal convictions;
- whether the Respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning;
- protection of KVCC community; and,
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

The disciplinary authority may impose any sanction deemed appropriate after a consideration of all of the relevant information.

The Complainant and the Respondent will be notified, in writing, of the sanction and the rationale for the sanction. The 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 Complainant will be informed of any sanctions that directly relate to the Complainant. The outcome letter will also provide each party with their appeal options, if any. If, under extenuating circumstances, there are any changes to the outcome, both parties will be simultaneously notified at the earliest possible time.

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KVCC may also notify appropriate administrators, including a direct supervisor of a Respondent, as necessary to implement the outcome and/or sanctions.

- I. **Appeal of Determination:** KVCC provides either Complainant or Respondent the opportunity to appeal a final determination, sanctions imposed, or a dismissal of a formal complaint, on the following bases (i) procedural irregularity that affected the outcome of the matter; (ii) new evidence not reasonably available at the time of the determination that could affect the outcome of the matter; or (iii) the Title IX Coordinator, investigator, or decision maker has a conflict or interest of bias for or against Complainant or Respondent that affected the outcome of the matter. An appeal must be filed within ten (10) calendar days of written notice of the final determination. The other party will have ten (10) calendar days to respond to the appeal in writing.

The decision maker for any appeal will be a different individual than the decision maker that reached the determination or dismissal, the investigator, or the Title IX Coordinator. The appeal decision maker shall issue a written decision simultaneously to both parties within fourteen (14) calendar days of receiving all appeal documents. These timeframes can be extended for good cause, as the discretion of KVCC, if requested in writing.

X. Prevention, Education and Training

KVCC is committed to the prevention of sexual misconduct and harassment through education and awareness programs. KVCC is also committed to the protection of minors and the prevention of child abuse. Throughout the year, KVCC offers educational programs to promote awareness of sexual misconduct and harassment. Prevention programs include an overview of KVCC's policies and procedures, relevant definitions, including prohibited conduct, discussion of the impact of alcohol and drug use, effective consent, 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. KVCC's Title IX Coordinator oversees the education and prevention calendar and tailors programming to campus needs and climate. All educational programs include a review of resources and reporting options available for students, faculty and staff.

As part of KVCC's commitment to provide an educational and work environment free from sexual misconduct and harassment, this Policy will be disseminated widely to the College community through email communication, publications, websites, new employee orientations, student orientations, and other appropriate channels of communication.

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XI. Review of Policy

This policy will be reviewed on a periodic basis to incorporate evolving law and guidance, evaluate the supports and resources available to the parties, and assess the effectiveness of the investigation and resolution process.

XII. Effective Date and Policy Effect

The Policy shall apply to all complaints made on or after August 14, 2020, regardless of when the conduct was alleged to have occurred. This policy supersedes any policies and procedures to the contrary. The following records shall be maintained for a period of seven (7) years: All investigations under the policy and result therefrom, any interim measures imposed, any hearing and result therefrom, any appeal and result therefrom, any informal resolution and result therefrom, and materials utilized to train Title IX Coordinators, investigators, decision makers.