

## I. Purpose and Scope of Policy

Kenyon College prohibits discrimination and discriminatory harassment based on age, race, ethnicity, color, national origin, ancestry, religion, medical condition, genetic information, veteran status, and marital status and any other characteristic protected by state, local, or federal law (collectively, “Protected Characteristics”).

While the College prohibits discrimination on the basis of sex, gender, gender identity, gender expression, sexual orientation, and disability, these are not included in the definition of “Protected Characteristics” under this Policy. Instead, discrimination or discriminatory harassment on the basis of sex, gender, gender identity, gender expression, or sexual orientation is covered in the [Sexual Misconduct and Harassment Policy: Title IX, VAWA, Title VII](#). Discrimination or discriminatory harassment on the basis of disability is covered in the Grievance Procedures for the Americans with Disabilities Act and the Rehabilitation Act of 1973 ([Student Grievance Procedure](#) and [Employee and Visitor Grievance Procedure](#)).

The purpose of this policy is to set forth what conduct is Prohibited Conduct under this Policy and to describe the process used in resolving complaints of discrimination based these Protected Characteristics. This policy applies to all members of the Kenyon College community, including, but not limited to, students, faculty, staff, administrators, the Board of Trustees, groups, vendors, others engaged in business with the College, guests, and visitors.

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 or 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.

Kenyon College supports the free exchange of ideas in the academic enterprise and shall interpret this policy in a way that protects such an exchange.

## II. Notice of Non-Discrimination

Kenyon College does not discriminate in its educational programs and activities on the basis of race, color, national origin, ancestry, sex, gender, gender identity, gender expression, sexual orientation, 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.

### III. Role of the Civil Rights Coordinator

The College has designated Samantha Hughes as the Civil Rights Coordinator. The Civil Rights Coordinator will facilitate the College's centralized review, investigation, and resolution of all reports of discrimination and discriminatory harassment. The Coordinator will ensure the effective implementation of this policy. All references to actions by the Civil Rights Coordinator may be performed by the Civil Rights Coordinator or a designee.

Complaints and inquiries may be made to the Civil Rights Coordinator:

Samantha J. Hughes  
Kenyon College  
Eaton Center North 258  
740-427-5820  
[hughess@kenyon.edu](mailto:hughess@kenyon.edu)

Inquiries may also be directed to the United States Department of Education's Office for Civil Rights, 1350 Euclid Ave., Suite 325, Cleveland, Ohio 44115. Inquiries regarding non-discrimination in employment may be directed to the U.S. Equal Employment Opportunity Commission at 800-669-4000 or the Ohio Civil Rights Commission at 888-278-7101.

### IV. Prohibited Conduct

This policy prohibits all forms of discrimination and discriminatory harassment on the basis of a Protected Characteristic. The policy also prohibits retaliation against any individual participating in any role in a reporting, investigation, or resolution process under this Policy.

#### A. Discrimination

Discrimination occurs when a behavior or policy has the purpose or effect of restricting or denying an individual's or a group's access to opportunities, programs, or resources in relation to a Protected Characteristic 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. For example, a professor never makes time to meet with Buddhist students but is very flexible in meeting with other students;
- 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. For example, only Black and Latinx employees are required to clock in and out for lunch;
- 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 a Protected Characteristic in providing any aid,

benefit, or service to students, faculty, or employees. For example, special office or meeting space is allocated to all groups except those for military veterans.

- 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. For example, only Jewish and Muslim job candidates are asked about vacation/personal days at their interviews.

When these or other forms of discrimination are based on a Protected Characteristic as defined by this policy, the conduct will be resolved under this policy.

The College recognizes that, in some cases, behavior that may otherwise appear to constitute discrimination based on the above definitions may nevertheless be permissible under federal and state laws, regulations, and guidance. In such cases, permissible actions under such laws, regulations, and guidance shall not be considered a violation of this Policy. For example, the offering of or participation in programs for the benefit of veterans and/or military personnel constitutes the provision of different aid, benefits, or services on the basis of veteran/military status, but it is permissible under federal law and therefore would not constitute a violation of this policy.

Note that for purposes of an individual that is entitled to reasonable accommodations (see Section V), those reasonable accommodations shall be taken into account in determining whether there is a Policy violation. For example, if an individual is permitted to wear different clothing or to change vacation days because of religion, that will not be considered a violation under this policy.

## B. Discriminatory Harassment

Discriminatory Harassment is any unwanted verbal or physical conduct on the basis of a Protected Characteristic 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 or educational 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 Discriminatory Harassment include but are not limited to:

- Threatening to harm someone or their property based on their religion;
- Repeatedly leaving notes/photos, etc. on a person's door demeaning their military service;
- Repeated, and unwanted, demeaning or negative comments related to a person's race or color.

## C. 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 reporting, 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.

## V. Accommodations

The College will consider reasonable accommodations on the basis of religion or military service for otherwise qualified individuals.

### A. Religion

Individuals who are otherwise qualified to participate in the College's programs, services, or employment opportunities may request reasonable accommodations on the basis of religion. An interactive process will occur to determine whether and which accommodations will be provided. This process is governed by separate College policies and procedures. Individuals who believe that the accommodations they have been offered are not appropriate shall use separate grievance procedures established for that purpose.

Employees seeking reasonable accommodations for religious reasons may contact the Assistant Director of Human Resources for Benefits at 740-427-5771.

Students seeking reasonable accommodations for religious reasons may contact the Director of Residential Life at 740-427-5142.

Anyone seeking reasonable accommodations for religious reasons may contact the Civil Rights Coordinator for more information and to be connected to an appropriate staff member.

## B. Military Service

Employees who are performing military service or are returning from performing military service should contact the Assistant Director of Human Resources at 740-427-5771 regarding questions about leave, employment, reemployment, and other related concerns.

Students who are interested in requesting a military leave of absence or other academic accommodation for military service should contact the Dean of Students at 740-427-5136. Students or applicants interested in financial aid relating to military service should contact the Director of Financial Aid at 740-427-5430.

# VI. 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). Interim measures are available regardless of whether the reporting party chooses to pursue any action under this policy. The Civil Rights 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 Civil Rights Coordinator will oversee and implement the provision of interim measures and remedies. The Civil Rights 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 supervisor
- 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 restricted access (in consultation with the appropriate division head as described in Section VI(C))
- 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 Restricted Access

Whenever a student's or group's alleged 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, the Civil Rights Coordinator, in consultation with the Dean of Students, may impose interim (temporary) restricted access 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.

Interim restricted access is not disciplinary in nature and is not recorded on the respondent's transcript.

Similarly, the Civil Rights 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.

## VII. 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 Civil Rights 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 Civil Rights 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 report of Prohibited Conduct 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, submit suggested questions in writing, 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 during the resolution process 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 Civil Rights Assessment

Upon receipt of a report, the Civil Rights Coordinator will conduct an initial Civil Rights assessment to provide an integrated and coordinated response to reports under this policy. In the course of this initial assessment, the Civil Rights 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 Civil Rights Coordinator will:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being;
- Notify the reporting party of the right to contact law enforcement;
- Inform the reporting party of the importance of preservation of evidence (i.e., 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 Civil Rights Coordinator may, in certain circumstances, proceed without a 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 Civil Rights Coordinator has sufficient information to determine the appropriate manner of resolution.

At the conclusion of the Civil Rights assessment, the Civil Rights Coordinator, will determine the appropriate manner of resolution. If the reported information would not support a policy violation (see Section IV, Prohibited Conduct), accepting all reported information as true, the Civil Rights 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 Civil Rights Coordinator to determine which method of resolution is appropriate.

The Civil Rights 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 an informal 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 as detailed in section VII.F.1.

### 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 Civil Rights 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. All communication shared with the investigators must come directly from the complainant or respondent.

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

The Civil Rights 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 Civil Rights 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 by the respondent under this policy;
- Whether circumstances suggest there is an increased risk of the respondent committing additional acts of violence;
- Whether the respondent threatened further violence against the reporting party or others;
- Whether the report indicates that multiple respondents were involved;
- Whether the report indicates that the conduct involved a weapon; 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 Civil Rights 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 may 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 (the Complainant or the Respondent) can request to end Informal Resolution process 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 Civil Rights 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 Civil Rights 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 VI.B. regarding Interim Measures. Other potential remedies include targeted or broad-based educational programming or training, an agreement between the parties that addresses the complainant's concerns, supported direct confrontation of the respondent, and/or indirect action by the Civil Rights 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. By state law, mediations are confidential. The parties and the Civil Rights Coordinator will sign a written document outlining any agreed upon resolution. The mediation will not be final until the parties and the Civil Rights Coordinator sign this document. The Civil Rights 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 or student transcript.

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

The Civil Rights 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 Civil Rights Coordinator concludes that Formal Resolution is appropriate, the College will initiate an investigation. The Civil Rights Coordinator will identify the potential violations and prepare the initial notification of charges. Any non-Civil Rights 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.

The College may delay granting a diploma otherwise earned until the completion of all phases of a formal resolution including completion of an appeal and/or sanctions imposed.

### *1. Investigation*

The complainant and respondent will receive written notice that an investigation has been initiated. The notice of investigation will include the identities of the parties involved, the specific section/s of the policy allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. The notice shall be provided in advance of any interview with the investigators, with sufficient time for meaningful preparation. The Civil Rights Coordinator, in consultation with the investigators, may amend the charges as part of the investigative process. The Civil Rights Coordinator will, if appropriate, issue amended charges to both parties.

The Civil Rights 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 the Prohibited Conduct section of this policy. 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 Civil Rights 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, at their discretion, will conduct other fact finding and/or discussions with any other individuals who may have information relevant to the determination. The 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 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 Civil Rights Coordinator.

The complainant and respondent will have an equal opportunity to be heard; submit written questions for the investigators to ask of the other party; submit information and evidence; and identify witnesses who may have relevant information. Investigators will review submitted questions and, in their discretion, may choose which questions are necessary and appropriate to the investigation and conduct any follow-up as they deem relevant.

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 Civil Rights 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. If there are multiple respondents, each respondent will be provided only with the appropriate portion(s) of the investigative documents that relate to the individual report involving them.

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 subject to redaction requirements as detailed in section VII.F.2.

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. Such patterns may indicate a heightened risk to the campus community, and therefore can be taken into account during an investigation. If the Title IX Coordinator determines that there may be a pattern of behavior, the Title IX Coordinator may, in their discretion, offer the information to the investigators for the limited purpose of consideration as pattern evidence. The investigators may then, in their discretion, determine whether such evidence is or may be to determine whether a policy violation occurred with respect to the allegations being investigated 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.

Any party seeking to introduce information about 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 Civil Rights Coordinator has the discretion to make the final determination whether evidence of prior 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 (Section VII.F.4).

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 Civil Rights 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 shareable by the parties. Exceptions may be made in compliance with Section 504 of the Rehabilitation Act of 1973.

The complainant and respondent may request that they be re-interviewed. The complainant and the respondent may, in writing, 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 Civil Rights 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.

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 complainant may appeal this outcome following the procedures set forth in Section VII.G. (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 Civil Rights 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, the respondent may be immediately placed on restricted access, the restrictions of which will be determined by the Civil Rights Coordinator 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.
- 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.
- When the typical or alternate Adjudicator is unable to serve, the Title IX Coordinator will select a trained individual to be the Adjudicator with notice to both parties.

The Adjudicator must be a neutral and impartial decision-maker. The parties will be informed, in writing, of the specific Adjudicator assigned to determine the sanction(s). Within 1 calendar day of receiving the notice of the designated Adjudicator, the complainant and the respondent may submit a written request to the Civil Rights 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. The designated Adjudicator will only be replaced if the Civil Rights Coordinator determines that their bias precludes impartiality or constitutes conflict. Additionally, an Adjudicator who has reason to believe they cannot make an objective determination must recuse themselves.

### *5. Sanctions*

In determining the appropriate sanction(s), 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 calendar 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 legal obligations;
- Impose any sanction(s) deemed appropriate after a consideration of all of the relevant information.

The Adjudicator will impose the sanction(s) 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 the sanction(s) will typically take effect immediately, but may be stayed at the discretion of the Adjudicator in consultation with the Civil Rights 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 sanction(s) 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 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 Staff 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, appropriate sanctions may range from a warning, a reprimand, relevant training, referral to counseling, salary freeze, removal from certain responsibilities (e.g., supervising employees), paid leave or unpaid leave, non-renewal of contract, reassignment, 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. Appeals*

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 the Vice President for Student Affairs. The alternate 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.

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

A complainant or respondent must submit a written appeal to both the Civil Rights 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, Civil Rights 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 Civil Rights Coordinator. Any extension will be communicated to the other party.

## VIII. Records

Records will be maintained regarding the report, the investigation, evidence presented during the process (formal or informal), the outcome of the process (formal or informal), 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 Civil Rights Coordinator and, if a person 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).

## IX. Policy Maintenance

Changes in procedures, including relevant definitions, to this policy will be presented to the community for their review and comment 30 days prior to their implementation. Non-procedural changes will be made by the Kenyon College Civil Rights Office.

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**Note:**

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.*