



**KEAN**



# **Title IX 2024 Policy and Procedures**



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# I. **KEAN UNIVERSITY SEX DISCRIMINATION, SEX-BASED HARASSMENT, AND RETALIATION POLICY FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD PARTIES (Hereinafter, “the Policy”)**

## 1. Purpose

Kean University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sex discrimination, sex-based harassment and retaliation for engaging in protected activity.

Kean University values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the Resolution Process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local sex discrimination laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, the University has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sex discrimination, sex-based harassment or retaliation.

## 2. Notice of Nondiscrimination

Kean University is committed to establishing and maintaining a diverse campus community. Equal opportunity and diversity represent principles, which are integrally woven into the University’s mission. The University complies with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in public post-secondary education institutions.

Kean University is committed to providing equal opportunity in employment and education, as well as equity of conditions for employment and education to all and does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of actual or perceived sex.

This Policy covers sex discrimination in both employment and access to educational opportunities. Therefore, any member of the Kean University community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, residential and/or social access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person’s actual or perceived sex, is in violation of this Policy.

Kean University will promptly and effectively address any such discrimination of which it has knowledge/Notice using the resolution process in the Sex Discrimination, Sex-based Harassment, and Retaliation Procedures.

Any student or employee who believes that he or she has been subjected to prohibited harassment and/or discrimination should contact the Office of Affirmative Action Programs and Title IX Coordinator, East Campus, Room 204, (908) 737-5980 or [titleix@kean.edu](mailto:titleix@kean.edu).

## 3. Nondiscrimination Team Contacts

*Kean University has appointed a Nondiscrimination Team, comprised of the following individual(s), to coordinate the University’s compliance with federal, state, and local civil rights laws and ordinances:*

**For discrimination and harassment allegations:**

Catricia Shaw  
Director/Title IX Coordinator  
Office of Affirmative Action Programs  
East Campus Room 204  
215 North Avenue  
Hillside, NJ 07205  
(908) 737-5983  
shawc@kean.edu  
www.kean.edu/titleix

De'Etra Pickett  
Managing Assistant Director/Deputy Title IX Coordinator  
Office of Affirmative Action Programs  
East Campus Room 204  
215 North Avenue  
Hillside, NJ 07205  
(908) 737-5984  
dpickett@kean.edu  
www.kean.edu/titleix

*Collectively, these individuals are responsible for providing comprehensive nondiscrimination education and training; coordinating the University's timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from sex discrimination, sex-based harassment, and retaliation.*

*Kean University recognizes that allegations under this Policy may include multiple forms of discrimination and harassment as well as violations of other University policies; may involve various combinations of students, employees, and other members of the Kean community; and may require the simultaneous attention of multiple University departments. Accordingly, all University departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable University policies, to provide uniform, consistent, efficient, and effective responses to alleged sex discrimination, sex-based harassment, or retaliation.*

## 4. External Contact Information

Concerns about the University's application of this Policy and compliance with certain federal civil rights laws may also be addressed to:

**For complaints involving students:**

**Office for Civil Rights (OCR)**  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Fax: (202) 453-6012  
TTY: (877) 521-2172  
Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

**New York Office**

**Office for Civil Rights**

U.S. Department of Education 32 Old Slip, 26th Floor

New York, NY 10005-2500 (646) 428-3900

Fax: (646) 428-3843

TTY: (80) 877-8339

Email: OCR.NewYork@ed.gov

**For complaints involving employees:**

**Division on Civil Rights**

N.J. Department of Law & Public Safety

(Within 180 days of the discriminatory act)

**Central Regional Office**

140 East Front Street, 6th Floor

P.O. Box 090

Trenton NJ 08625-0090

(609) 292-4605

**Northern Regional Office**

31 Clinton Street, 3rd floor

P.O. Box 46001

Newark, NJ 07102

(973) 648-2700

**South Shore Regional Office**

1325 Boardwalk, 1st Floor

Tennessee Avenue and Boardwalk Atlantic City, NJ 08401

(609) 441-3100

**Southern Regional Office**

5 Executive Campus, Suite 107 Cherry Hill, NJ 08034

(856) 486-4080

Equal Employment Opportunity Commission (EEOC) (Within 300 days of the discriminatory act)

**EEOC Newark Area Office** (The Newark Area Office has jurisdiction over the State of New Jersey counties of

Bergen, Essex, Hudson, Hunterdon,

Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren)

Two Gateway Center

283-299 Market Street

Suite 1703

Newark, NJ 07102

(800) 669-4000

(973) 645-4684

Fax: (973) 645-4524

TTY: (800) 669-6820

ASL Video Phone: (844) 234-5122  
Web: <https://www.eeoc.gov/field-office/newark/location>  
Appointment Scheduling: <https://publicportal.eeoc.gov/>

**EEOC Philadelphia District Office** (The Philadelphia District Office has jurisdiction over the State of New Jersey counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem)  
801 Market Street  
Suite 100  
Philadelphia, PA 19107  
(800) 669-4000  
(267) 589-9700  
Fax: (215) 440-2606  
TTY: (800) 669-6820  
ASL Video Phone: (844) 234-5122  
Email: PDOContact@eeoc.gov Web:  
<https://www.eeoc.gov/field-office/philadelphia/location>  
Appointment Scheduling: <https://publicportal.eeoc.gov/>

## 5. Mandated Reporting and Confidential Employees

All Kean University employees (faculty, staff, administrators, and student employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected sex discrimination, sex-based harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal University action.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Title IX Coordinator.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will take action when an incident is reported to them.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sex discrimination, sex-based harassment, or retaliation of which they become aware is a violation of this Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

A Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

### *Confidential Resources*

*To enable Complainants to access support and resources without filing a Complaint, Kean University has designated specific employees as Confidential Resources. Those designated by the University as Confidential Resources are not required to report actual or suspected sex discrimination, sex-based harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without*



*any obligation to inform an outside agency or University official unless a Complainant has requested the information be shared.*

*There are three categories of Confidential Employees: 1) Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and counselors; 2) Those whom Kean has specifically designated as confidential for purposes of providing support and resources to the Complainant; and 3) Those conducting human subjects research as part of a study approved by Kean University's Institutional Review Board (IRB).*

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Employees:

**Confidential Employees**

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- On-campus Student Support Services Advocates
- Director of Sports Medicine/Athletic Trainers

The [Kean Counseling Center](#) and/or the [Employee Assistance Program](#) are available to help free of charge and may be consulted on an emergency basis during normal business hours.

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order and submit timely anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

In addition, Complainants may speak with individuals unaffiliated with Kean University without concern that this Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

## 6. Scope

This Policy is only applicable to alleged incidents that occur after August 1, 2024. For alleged incidents of sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and at [sexual-harassment-policy-and-procedures](#).

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in the University's program or activities, including education and employment.

This Policy prohibits all forms of sex discrimination and may be applied to incidents, patterns and/or institutional culture/climate, all of which may be addressed in accordance with this Policy. Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Additional protections against sex discrimination are available for pregnant and parenting students under the [Pregnancy and Related Conditions and Parenting Student Policy](#).

## 7. Jurisdiction

This policy applies to the University's education program and activities (defined as including locations, events, or circumstances in which the University exercises substantial control over both the Respondent and the context in which the conduct occurred), , circumstances where the University has disciplinary authority, and to misconduct occurring within any building owned or controlled by a Kean University recognized student organization. A Complainant does not have to be a member of the University community to file a complaint, at the discretion of the Title IX Coordinator.

This policy may also be applicable to the effects of off-campus misconduct that limit or deny a person's access to Kean University's educational program or activities. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.

A substantial University interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that substantially interferes with the University's educational interests or mission.

For disciplinary action to be issued under this Policy, the Respondent must be a Kean University faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the Kean community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The University can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers and/or to these Policies and procedures to which their employer has agreed to be bound by their contracts.

When a party is participating in a dual enrollment/early college program, the University will coordinate with the party's home institution to determine jurisdiction and coordinate providing supportive measures and responding to the complaint under the appropriate policy and procedures based on the allegations and identities of the Parties.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, clinical placement, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment, those effects can often be addressed remedially by the Title IX Coordinator if brought to their attention.

## 8. Supportive Measures

Kean University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sex discrimination, sex-based harassment and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized measures offered as appropriate and reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties and/or the University's educational environment; provide support during the University's Resolution Process procedures or during the informal resolution process; and/or deter sex discrimination, sex-based harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving notice/knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, the University will inform the Complainant, in writing, that they may file a complaint with the University either at that time or in the future.

The Title IX Coordinator will work with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The University will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the University's ability to provide the supportive measures. If the Complainant or Respondent has a disability, the Title IX Coordinator may consult, as appropriate, with the Office of Accessibility Services for students or the Office of Human Resources for employees to determine how to comply with Section 504 of the Rehabilitation Act of 1973, [29 U.S.C. 794](#), in the implementation of supportive measures.

The University will act to ensure as minimal an academic/occupational impact on the parties as possible. The University will implement measures in a way that does not unreasonably burden any party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance

- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact restrictions (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- No Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The University may, as appropriate, modify or terminate supportive measures at the conclusion of the Resolution Process procedures or at the conclusion of the informal resolution process, or the University may continue them beyond that point.

The Parties are provided with a timely opportunity to seek modification or reversal of the University's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the definition of supportive measures in § 106.2 of the federal Title IX Regulations. The University will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances change materially. The University typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

## 9. Online Harassment and Misconduct

The policies of Kean University are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities or use University networks, technology, or equipment.

Although Kean University may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects. These means may include use of the Resolution

Process to address off-campus conduct whose effects contribute to limiting or denying a person access to the University's education program or activity.

Nothing in this Policy is intended to infringe upon or limit a person's rights to free speech. Any online posting or other electronic communication by students, including technology-facilitated bullying, stalking, harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

## 10. Inclusion Related to Gender Identity/Expression

Kean University strives to ensure that all individuals are safe, included, and respected in their education and employment environments, regardless of their gender identity or expression, including intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse students and employees.

Discrimination and harassment on the basis of gender identity or expression are not tolerated by the University. If a member of the University community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described herein.

In upholding the principles of equity and inclusion, the University supports the full integration and healthy development of those who are gender diverse and seeks to eliminate any stigma related to gender identity and expression.

Kean University is committed to fostering a climate where all identities are valued, contributing to a more vibrant and diverse community. The University will administratively address issues that some students and employees, including those identifying as intersex, transgender, agender, nonbinary, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do the University's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to the University's goal of being as welcoming and inclusive a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be and may constitute a Policy violation if the effect is greater than *de minimis* harm. We each have a right to determine our own gender identity and expression, but we don't get to choose or negate someone else's.

Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, nonbinary, or gender diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.



To a person who is transgender, transitioning, nonbinary, or gender diverse, their cisgender identity may be something that is in their past — dead, buried, and behind them. To then revive their deadname could trigger issues, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Again, unintentional deadnaming can often be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This Policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, nonbinary, and gender-diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with law
- Ensuring all students have equal access to educational programming, activities, and facilities, including restrooms and locker rooms
- Ensuring all employees have equal access to employment opportunities and work, service, or health-related facilities
- Providing professional development for employees and education for students on topics related to gender inclusion
- Encouraging all students and employees to respect the pronoun usage and identities of all members of the University community

The University also follows the [State of New Jersey Workplace Gender Transition Guidelines](#) designed to create a safe and productive workplace environment for all employees.

Kean University uses a number of interventions to address concerns that are raised related to gender-based harassment or discrimination, including problem-solving, intervention, confrontation, investigation, and Policy enforcement. When conflicts arise between the right of members of the community to be free from gender-identity discrimination and those exercising their right to religious freedom, the University will try to balance rights and interests to find mutually agreeable outcomes or compromises. When that is not possible, the University will offer remedial solutions or enforce its Policies while also respecting the rights of all members of its community.

## 11. Prohibited Conduct

Students and employees are entitled to an educational and employment environment that is free of sex discrimination, sex-based harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited sex discrimination, sex-based harassment, and retaliation that are prohibited under this Policy. When speech or conduct is protected by academic freedom, it will not be considered a violation of University Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to

incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

## **A. Sex Discrimination**

Sex discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived sex.

Discrimination can take two primary forms:

### **1) Disparate Treatment Discrimination:**

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:
  - Excludes a person from participation in;
  - Denies a person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a University program or activity.

### **2) Disparate Impact Discrimination:**

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on the basis of sex that:
  - Excludes a person from participation in;
  - Denies a person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a University program or activity.

## **B. Sex-based Harassment (Applicable under Title IX, Title VII, and the Fair Housing Act)**

**Sex-based Harassment** is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex,<sup>1</sup> including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

### **1) Quid Pro Quo:**

- an employee agent, or other person authorized by the University,
- to provide an aid, benefit, or service under the University's education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,

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<sup>1</sup> Throughout this Policy, "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.

- on a person's participation in unwelcome sexual conduct.

## 2) **Hostile Environment Harassment:**

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the University's education program or activity

The University reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not prohibited by law. Addressing such conduct will not result in the imposition of discipline under University Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Title IX Coordinator.

## 3) **Sexual Assault:**<sup>2</sup>

### a. **Rape:**

- Penetration by the Respondent, no matter how slight,
- of the vagina or anus of the Complainant,
- with any body part or object, or
- oral penetration by the Respondent of a sex organ of the Complainant,
- without the consent of the Complainant.

### b. **Fondling:**

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

### c. **Incest:**

- Sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by NJ law.

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<sup>2</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

d. **Statutory Rape:**

- Sexual intercourse,
- with a person who is under the statutory age of consent of 18.

**4) Dating Violence**, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
    - a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - b) Dating violence does not include acts covered under the definition of domestic violence.

**5) Domestic Violence**,<sup>3</sup> defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of NJ, or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of NJ.

**6) Stalking**, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

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<sup>3</sup> To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**C. Sexual Exploitation:<sup>4</sup>**

- a person taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above,
- for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) a person's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for

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<sup>4</sup> This offense is not classified under Title IX as "Sex-based Harassment," but it is included here in this Policy as a tool to address a wider range of behaviors.



the purpose of making that person vulnerable to non-consensual sexual activity

- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)

#### **D. Other Prohibited Conduct**

1) **Bullying:**<sup>5</sup>

- repeated and/or severe aggressive behavior
- that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant
- that is not speech or conduct that is otherwise protected by the First Amendment

2) **Endangerment:**

- threatening or causing physical harm
- extreme verbal, emotional, or psychological abuse
- other conduct which threatens or endangers the health or safety of any person or damages their property

3) **Hazing:**

- any act or action
- which does or is likely to endanger the mental or physical health or safety of any person
- as it relates to a person's initiation, admission into, or affiliation with any Recipient group or organization

For the purposes of this definition:

- It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or student organization, for

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<sup>5</sup>For Bullying, Hazing, and Endangerment, these offenses can be applied when the conduct is on the basis of sex but is not a form of Sex-based Harassment.

an allegation of hazing to be upheld.

- It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained.
- The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered hazing.
- Hazing is not confined to the student group or student organization with which the person subjected to the hazing is associated.

#### 4) **Retaliation:**

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by the University, a student, employee, or a person authorized by the University to provide aid, benefit, or service under the University's education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under this Policy, including an Informal Resolution process, or in any other appropriate steps taken by the University to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the University to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under this Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

#### 5) **Unauthorized Disclosure:**<sup>6</sup>

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the University; or
- publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

#### 6) **Failure to Comply/Process Interference**

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<sup>6</sup> Nothing in this section restricts the ability of the Parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy), consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the Resolution Process.

- Intentional failure to comply with the reasonable directives of Title IX Coordinator in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an Informal Resolution agreement
- Intentional failure to comply with mandated reporting duties as defined in this Policy
- Intentional interference with the Resolution Process, including, but not limited to:
  - Destruction of or concealing of evidence
  - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
  - Intimidating or bribing a witness or party

### E. Sanction Ranges

The following sanction ranges apply for Prohibited Conduct under this Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

- **Sex Discrimination:** warning through expulsion or termination.
- **Quid Pro Quo Harassment:** warning through expulsion or termination.
- **Hostile Environment Harassment:** warning through expulsion or termination.
- **Rape:** suspension through expulsion or termination.
- **Fondling:** warning through suspension or termination.
- **Incest:** warning through probation.
- **Statutory Rape:** warning through suspension (termination for employees).
- **Stalking:** probation through expulsion or termination.
- **Dating/Domestic Violence:** probation through expulsion or termination.
- **Sexual Exploitation:** warning through expulsion or termination.
- **Bullying:** warning through expulsion or termination.
- **Endangerment:** warning through expulsion or termination.
- **Hazing:** warning through expulsion or termination.
- **Retaliation:** warning through expulsion or termination.
- **Unauthorized Disclosure:** warning through expulsion or termination.
- **Failure to Comply/Process Interference:** warning through expulsion or termination.

### F. Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

## 1) Consent

Consent is defined as:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.<sup>7</sup>

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to be kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom,

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<sup>7</sup> The State definition of Ineffective consent is as follows: "Unless otherwise provided by the code or by the law defining the offense, assent does not constitute consent if: (1) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or (2) It is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature of harmfulness of the conduct charged to constitute an offense; or (3) It is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense." N.J.S.A. 2C:2-10. This definition is applicable to criminal prosecutions for sex offenses in New Jersey, but may differ from the definition used at the University to address Policy violations.

or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on the University to determine whether its Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.<sup>8</sup>

## **2) Force**

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

## **3) Incapacitation**

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented,

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<sup>8</sup> Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual.



helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

### **G. Unethical Relationships**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant policy violation still exists. The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships are required to complete the [Supervisory Conflict of Interest Form](#) with the University Ethics Office and must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.

This type of relationship includes Resident Advisors (RAs) and students over whom the RA has direct responsibility. While no relationships are prohibited by this Policy, failure to timely self-report such relationships to a supervisor and the Ethics Liaison Officer as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to the

University Ethics Office for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

## 12. Standard of Proof

The University uses the Preponderance of the Evidence standard of proof when determining whether a Policy violation occurred. This means that the University will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

## 13. Reports/Complaints of Sex Discrimination, Sex-Based Harassment, and/or Retaliation

A Report provides notice to the University of an allegation or concern about sex discrimination, sex-based harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. A Complaint provides notice to the University that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a Report and may decide at a later time to make a Complaint. Reports or Complaints of sex discrimination, sex-based harassment, and/or retaliation may be made using any of the following options:

- 1) File a Complaint with, or give verbal Notice directly to, the Title IX Coordinator or to any member of the Nondiscrimination Team. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator or any other Nondiscrimination Team member listed in this Policy.
- 2) Submit online Notice with the [Title IX Reporting Form](#). Anonymous Notice is accepted, but the Notice may give rise to a need to try to determine the Parties' identities. Anonymous Notice typically limits the University's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted.

Reporting carries no obligation to initiate a Complaint, and in most situations, the University is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the University may need to initiate a Resolution Process. If a Complainant does not wish to file a Complaint, the University will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows the University to discuss and/or provide supportive measures, in most circumstances.

Note that a person is entitled to make a Complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person,

or if the Title IX Coordinator initiates a Complaint.

## 14. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

## 15. False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a Policy violation determination.

Additionally, witnesses and parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or Resolution Process can be subject to discipline under appropriate University policies.

## 16. Confidentiality/Privacy

Kean University makes every effort to preserve the privacy of the parties. The University will not share the identity of any individual who has made a complaint of sex discrimination, sex-based harassment or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination, sex-based harassment or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes of applicable laws and regulations (e.g. Title IX), Family Educational Rights and Privacy Act (FERPA), and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.<sup>910</sup>

Additional information regarding confidentiality and privacy can be found in Appendix E.

### Unauthorized Disclosure of Information

Parties and Advisors are prohibited from disclosing information and evidence obtained by the University through the Resolution Process, to the extent that information is the work product of the University (meaning it has been produced, compiled, or written by the University for purposes of its investigation and resolution of a Complaint), without authorization. It is also a violation of the University Policy to publicly disclose institutional work product that contains a party or witness's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions. Nothing in this section shall be construed to restrict the ability of the Parties to obtain and present evidence, including by speaking to

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<sup>9</sup> 20 U.S.C. 1232g

<sup>10</sup> 34 C.F.R. § 99

witnesses; consulting with their family members, confidential resources, or Advisors; or otherwise preparing for or participating in the Resolution Process. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint are authorized.

## 17. Emergency Removal/Interim Actions/Leaves

Kean University can act to remove a student Respondent accused of sex discrimination, sex-based harassment, or retaliation from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any student, employee, or other individual arising from the allegations of sex discrimination justifies removal. This risk analysis is performed by the Title IX Coordinator and may be done in conjunction with the Kean University Behavioral Intervention Team (KUBIT) using its standard objective violence risk assessment procedures (See Appendix G).

The University can place an employee Respondent on administrative leave from employment responsibilities during the pendency of the University's Resolution Process procedures. Employees are subject to existing procedures for interim actions and leaves as outlined by the Office of Human Resources or appropriate union agreement.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the opportunity to challenge the decision immediately following the removal.

## 18. Federal Timely Warning Obligations

Kean University must issue timely warnings for incidents reported that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## 19. Amnesty

The Kean University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to University officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the University community that Complainants choose to give Notice of misconduct to Kean officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Kean University offers parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident. Granting amnesty is a discretionary decision made by the University, and amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

**A. Students:**

The University maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, the University may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

**B. Employees:**

Sometimes, employees are hesitant to report sex discrimination, sex-based harassment or retaliation they have experienced for fear that they may get into trouble themselves. The University may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

Employees should also refer to the [Whistleblower Act](#) for information regarding employee protections for reporting.

## 20. Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. The University will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

### Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement)
- Seeking medical treatment can be essential, even if it is not for the purpose of collecting forensic evidence.

### Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
  - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of email and social media correspondence, including notifications related to account access alerts.

- Take time-stamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

## 21. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking; and<sup>11</sup>
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with the Department of Campus Police and Public Safety for publication in the Annual Security Report and daily campus crime log.

**Campus Security Authorities include:** the Office of the Vice President for Student Affairs, Office of Residential Student Services (including Resident Assistants and student security staff), Center for Leadership and Service (including faculty advisors to student groups), Department of Athletics and Recreation, Miron Student Center Operations and Event Management, Office of Student Accountability, Standards and Education, Office of Student Government, Kean Wellness Center, Kean Ocean Administration Office, Kean Ocean Campus Life Office, Wenzhou-Kean University Office of Academic Affairs, Wenzhou-Kean University Office of Student Affairs, Ocean County College Campus Security and Public Safety Department and University vice presidents and academic deans.

## 22. Independence and Conflicts of Interest

The Title IX Coordinator manages the Resolution Process and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and

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<sup>11</sup> VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

these procedures. The members of the Resolution Process are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the Office of University Counsel at 908-737-3321. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other member of the Resolution Process should be raised with the Title IX Coordinator.

## 23. Revision of this Policy

This Policy and procedures supersedes any previous policies addressing sex discrimination, sex-based harassment, and/or retaliation, though previous policies and procedures remain in force for sexual harassment incidents occurring before August 1, 2024. The Title IX Coordinator will review and update this Policy and procedures regularly. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of state and federal laws which frame such policies and codes, generally.

This Policy is effective August 1, 2024.

## II. RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF PROHIBITED SEX DISCRIMINATION, SEX-BASED HARASSMENT, AND RETALIATION POLICY FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD PARTIES (Hereinafter the “Resolution Process”)

### 1. Overview

Kean University will act on any Notice, Complaint, or Knowledge of a potential violation of this Policy that the Title IX Coordinator or any other Mandated Reporter receives by applying the Resolution Process below..

Kean University has adopted the below Resolution Process procedures that provide for the prompt and equitable resolution of Complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations. Unionized employees are subject to the terms of their union agreements to the extent those agreements do not conflict with federal or state compliance obligations.

All other allegations of discrimination unrelated to incidents covered by the Policy will be addressed through the procedures under the [New Jersey State Policy Prohibiting Discrimination in the Workplace](#).

### 2. Notice/Complaint

Upon receipt of Notice, a Complaint or Knowledge of an alleged Policy violation, the Title IX Coordinator will initiate a prompt initial evaluation to determine the University’s next steps. The Title IX Coordinator will contact the Complainant/source of the Notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

### 3. Collateral Misconduct

Collateral misconduct is defined to include potential violations of other University policies not incorporated into the Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Title IX Coordinator may consult with University officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Title IX Coordinator. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the Student Code of Conduct, course catalogs, employee handbooks, program handbooks, union contracts, and the like.

### 4. Initial Evaluation



The Title IX Coordinator conducts an initial evaluation typically within seven (7) Business days of receiving Notice/Complaint/Knowledge of alleged misconduct.<sup>12</sup> The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
  - If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the [dismissal provision](#) in these procedures. It may then be referred to another process, if applicable.
- Determining whether University has jurisdiction over the reported conduct, as defined in the Policy.
  - If the conduct is not within University jurisdiction, the matter is typically dismissed from this process, consistent with the [dismissal provision](#) in these procedures. If applicable, the conduct will be referred to the appropriate University office for resolution.
- Offering and coordinating [supportive measures](#) for the Complainant.
- Offering and coordinating [supportive measures](#) for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below.
- Determining whether the Complainant wishes to initiate a Complaint.
- Notifying the Respondent of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below, if a Complaint is made.

### ***Helping a Complainant to Understand Resolution Options***

If the Complainant indicates they wish to initiate a Complaint (in a manner that can reasonably be construed as reflecting intent to make a Complaint), the Title IX Coordinator will help to facilitate the Complaint, which will include working with the Complainant to determine whether the Complainant wishes to pursue one of three resolution options:

- a supportive and remedial response, and/or
- Informal Resolution, or
- the Resolution Process described below.

The Title IX Coordinator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

If the Complainant elects for the Resolution Process below, and the Title IX Coordinator has determined the Policy applies and that the University has jurisdiction, they will route the matter to the appropriate Resolution Process Team member, will provide the Parties with a Notice of Investigation and Allegation(s), and will initiate an investigation consistent with these Procedures.

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<sup>12</sup> If circumstances require, the Title IX Coordinator will designate another person to oversee the Resolution Process should an allegation be made about the Title IX Coordinator or the Title IX Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Title IX Coordinator will assess whether the matter is suitable for Informal Resolution and refer the matter accordingly.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Title IX Coordinator), though the Complainant can elect to initiate one later, if desired.

### ***Title IX Coordinator Authority to Initiate a Complaint***

If the Complainant does not wish to file a Complaint, the Title IX Coordinator, who has ultimate discretion as to whether a Complaint is initiated, will offer Supportive Measures and determine whether to initiate a Complaint themselves. To make this determination, the Title IX Coordinator will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if the University cannot ensure equal access without initiating a Complaint. The Title IX Coordinator will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to initiate a Complaint.
- The Complainant's reasonable safety concerns regarding initiating a Complaint.
- The risk that additional acts of sex discrimination would occur if a Complaint is not initiated.
- The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the Parties, including whether the Respondent is a University employee.
- The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals.
- The availability of evidence to assist a Decision-maker in determining whether sex discrimination occurred.
- Whether the University could end the alleged sex discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Title IX Coordinator may consult with appropriate University employees, and/or conduct a violence risk assessment<sup>13</sup> to aid their determination whether to initiate a Complaint.

When the Title IX Coordinator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

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<sup>13</sup> See detailed information regarding Violence Risk Assessment in Section 7 and Appendix G.

## 5. Dismissal

The University may dismiss a Complaint if, at any time during the investigation or Resolution Process, one or more of the following grounds are met: :

- 1) The University is unable to identify the Respondent after taking reasonable steps to do so;  
The University no longer enrolls or employs the Respondent;
- 2) A Complainant voluntarily withdraws in writing any or all of the allegations in the Complaint, and the Title IX Coordinator declines to initiate a Complaint, and the University determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- 3) The University determines the conduct alleged in the Complaint, even if proven, would not constitute a Policy violation.

A Decision-maker can recommend dismissal to the Title IX Coordinator, if they believe the grounds are met. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Upon any dismissal, the University will promptly send written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, the University will also simultaneously notify the Respondent of the dismissal in writing.

The University will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will also notify the Respondent that the dismissal may be appealed. If a dismissal is appealed, the University will follow the procedures outlined in Section 6.

When a Complaint is dismissed, the University will, at a minimum:

- Offer Supportive Measures to the Complainant as appropriate;
- If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the University's education program or activity.

## 6. Appeal of Dismissal

All dismissal appeal requests must be filed within three (3) Business days of the notification of the dismissal.

The Title IX Coordinator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Title IX Coordinator must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, the University will:

- Implement dismissal appeal procedures equally for the Parties.
- Assign a trained Dismissal Appeal Officer who did not take part in an investigation of the allegations or dismissal of the Complaint.
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal.
- Notify the Parties of the result of the appeal and the rationale for the result.

Appeals of dismissals are limited to the following grounds:

1. Procedural irregularity that would change the outcome of the matter;
2. New evidence that would change the outcome and that was not reasonably available when the dismissal was decided;
3. The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

The appeal request should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Title IX Coordinator will share the request with all other Parties and provide three (3) Business days for all Parties to make a statement in support of, or challenging, the outcome and for the Title IX Coordinator to respond to the request. At the conclusion of the response period, the Title IX Coordinator will forward the appeal, as well as any responses provided by the Parties and/or the Title IX Coordinator to the Dismissal Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the Dismissal Appeal Officer will deny the request, and the Parties, their Advisors, and the Title IX Coordinator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in this Policy, then the Dismissal Appeal Officer will notify all Parties and their Advisors, and the Title IX Coordinator, of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has three (3) Business days to review and decide on the appeal, though extensions can be granted at the Title IX Coordinator's discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Officer may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

## 7. Emergency Removal of a Student

Kean University may emergently remove a student accused of sex discrimination, sex-based harassment or retaliation upon receipt of Notice/Knowledge, a Complaint, or at any time during the Resolution Process. Prior to an emergency removal, the University will conduct an individualized violence risk assessment (see Appendix G) and may remove the student if that assessment determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action.

When an emergency removal is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal within two (2) Business days of the notification. Upon receipt of a challenge, the Title IX Coordinator will meet with the student (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate, should be modified, or lifted. When this meeting is not requested within two (2) Business days, objections to the emergency removal will be deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator for review.

An emergency removal may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing, typically within three (3) Business days of the review meeting.

## 8. Placing an Employee on Leave

When the Respondent is an employee, or a student employee accused of misconduct that violates this Policy in the course of their employment, existing provisions for interim action are typically applicable instead of the above emergency removal process. Procedures for unionized employees can be found [here](#).

## 9. Counter-Complaints

The University is obligated to ensure that the Resolution Process is not abused for retaliatory purposes. Although the University permits the filing of counter-complaints, the Title IX Coordinator will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter-complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the Title IX Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

## 10. Advisors in the Resolution Process

### A. *Who Can Serve as an Advisor?*

The parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings and interviews within the Resolution Process, including intake. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>14</sup>

The Title IX Coordinator will offer to assign a trained Advisor to any party if the party chooses. If the Parties choose an Advisor from the Pool (see Section 12) available from the University, the University will have trained the Advisor and familiarized them with the University's Resolution Process.

The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, the University is not obligated to provide an attorney to advise that party.

A party may elect to change Advisors during the Resolution Process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

The University may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Title IX Coordinator. The decision to grant this request is at the Title IX Coordinator's sole discretion and will be granted equitably to all Parties.

If a party requests that all communication be made through their attorney Advisor instead of to the party, the University will agree to copy both the party and their Advisor on all communications.

Advisors appointed by the University cannot be Confidential Employees, and although they will not be asked to disclose details of their interactions with their advisees to University officials or Decision-makers absent an emergency, they are still reminded of their Mandated Reporter responsibilities.

As a public entity, the University fully respects and accords the Weingarten rights of employees, meaning that for Parties who are entitled to union representation, the University will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses that are Kean Federation of Teachers Union members are permitted to have union representation or Advisors in Resolution Process interviews or meetings.

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<sup>14</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. The Advisor cannot have institutionally conflicting roles, such as being an administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally, choosing an Advisor who is also a witness in the process creates potential for bias and conflicts of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker(s).

*B. Advisor's Role in the Resolution Process*

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

*C. Records Shared with Advisors*

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records the University shares with them, per [Section 16](#) of the Policy addressing Confidentiality. Advisors may not disclose any Kean University work product or evidence the University obtained solely through the Resolution Process for any purpose not explicitly authorized by the University.

Accordingly, Advisors will be asked to sign Non-Disclosure Agreements (NDAs). The University may decline to share materials with any Advisor who has not executed the NDA. University may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's confidentiality expectations.

*D. Advisor Expectations*

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings/interviews when planned, but the University may change scheduled meetings/interviews to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview by telephone, video conferencing, or other similar technologies.

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not, and whether they are selected by a party or appointed by the University. Advisors are expected to advise without disrupting proceedings.

*E. Advisor Policy Violations*

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the University's established rules of decorum, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview

may be ended, or other appropriate measures implemented, including the University requiring the Party to use a different Advisor or providing a different University-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

## 11. Resolution Options Overview

This Resolution Process, consisting of Informal Resolution or Administrative Resolution, is the University's chosen approach to addressing all forms of discrimination on the basis of protected characteristics, harassment, retaliation, and other prohibited conduct under the Policy. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator's discretion.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with Section 16 of the Policy.

### **A. Informal Resolution**

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a final determination, or the Title IX Coordinator may offer the option to the Parties, in writing, unless doing so would conflict with Federal, State or local law. The University will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

Before initiation of an Informal Resolution process, the University will provide the parties with a NOIA that explains:

- The allegations.
- The requirements of the Informal Resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume the University's Resolution Process.
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the Resolution Process arising from the same allegations.
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.
- What information the University will maintain, and whether and how it could disclose such information for use in its Resolution Process, if the Resolution Process is initiated or resumed.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker. Such individuals must not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent.

It is not necessary to pursue Informal Resolution first in order to pursue an Administrative Resolution. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume an Administrative Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution, should Informal Resolution not be successful, unless agreed to by all Parties.



If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

The University offers four (4) categories of Informal Resolution:

**a. Supportive Resolution**

The Title IX Coordinator will meet with the Complainant to determine reasonable [supportive measures](#) that are designed to restore or preserve the Complainant's access to the University's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Title IX Coordinator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Title IX Coordinator does not initiate a Complaint.

**b. Educational Conversation**

The Complainant(s) may request that the Title IX Coordinator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and University policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Title IX Coordinator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with this Policy.

**c. Accepted Responsibility<sup>15</sup>**

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Title IX Coordinator will determine whether all Parties and the University are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of the University Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Resolution Process will either continue or resume.

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<sup>15</sup> In Section 20 below, there is a description of a process to waive the decision-making step of the Resolution Process if a Respondent decides to admit to violating the charged Policies. That section and this one are similar, but there are meaningful differences. In this section, the Parties must agree to the resolution, and the Respondent in essence self-sanctions as part of the Informal Resolution by agreeing to voluntarily comply with whatever the terms are to which the Parties agree. Section 20, in contrast, is unilateral. Neither the Complainant nor the Title IX Coordinator determine eligibility. It is simply a waiver of steps in the process by the Respondent, who can admit violations and accept sanctions assigned by the Decision-maker, if they choose to. No Complainant approval is sought or needed. Under Section 20, the outcome involves sanctioning imposed by the Decision-maker, rather than an agreement to self-sanction, as outlined in this section.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

**d. Alternative Resolution**

The University offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Title IX Coordinator or other appropriate University officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Title IX Coordinator may consider the following factors to assess whether Informal Resolution is appropriate, or which form of Informal Resolution may be most successful for the Parties:

- The parties' amenability to Informal Resolution;
- Likelihood of potential resolution, considering any power dynamics between the parties;
- The nature and severity of the alleged misconduct;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Respondent's disciplinary history;
- Whether an emergency removal or other interim action is needed;
- Skill of the facilitator with this type of Complaint;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Informal Resolution (e.g., time, staff)

The Title IX Coordinator has the authority to determine whether Informal Resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement. The Title IX Coordinator also has the authority to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the University's education program or activity.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the Informal Resolution process. The Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the University's compliance obligations in addition to the Informal Resolution.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of Complaints resolved by Informal Resolution are not appealable.

If an Informal Resolution option is not available or selected, the University will initiate or continue an investigation and subsequent Resolution Process to determine whether the Policy has been violated.

**B. Administrative Resolution Process (see [Section 22](#) below)**

## 12. Resolution Process Pool

The Resolution Process relies on a pool of administrators (“the Pool”) to carry out the process.<sup>16</sup>

*a. Pool Member Roles*

Members of the Pool are trained annually, and can serve in the following roles, at the direction of the Title IX Coordinator:

- Appropriate intake of and initial guidance pertaining to Complaints
- Advisor to the parties
- Informal Resolution Facilitator
- Perform or assist with initial evaluation
- Investigator
- Decision-maker for challenges to emergency removal and supportive measures
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker

*b. Pool Member Appointment*

The Title IX Coordinator, in consultation with senior administrators as necessary, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different Complaints, the University can also designate permanent roles for individuals in the Pool. At the discretion of the Title IX Coordinator, the Decision-maker may be the same person as the Title IX Coordinator or Investigator.

*c. Training (see Appendix J for details of training for Pool Members)*

## 13. Notice of Investigation and Allegations (NOIA)

Prior to an investigation, the Title IX Coordinator will provide the Parties with a detailed written Notice of the Investigation and Allegations (the “NOIA”). Amendments and updates to the NOIA may be made as the

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<sup>16</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles.

investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA typically includes:

- A meaningful summary of all allegations,
- The identity of the involved Parties (if known),
- The precise conduct alleged to constitute sex discrimination,
- The date(s) and location(s) of the alleged incident(s) (if known),
- The specific offenses implicated,
- A description of, link to, or copy of the applicable procedures,
- A statement that the Parties are entitled to an equal opportunity to present and access the relevant and not otherwise impermissible evidence,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the Resolution Process and that the Parties will be given an opportunity during the review and comment period to inspect and review all relevant and not otherwise impermissible evidence,
- A statement that retaliation is prohibited,
- Information about the confidentiality of the Resolution Process, including that the Parties and their Advisors (if applicable) may not share the University work product obtained through the Resolution Process,
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process,
- A statement informing the Parties that the University policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process,
- Detail on how the Party may request disability accommodations or other support assistance during the Resolution Process,
- A link to the University's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to notify the Title IX Coordinator of any conflict of interest the Investigator(s) may have in advance of the interview process,
- An instruction to preserve any evidence that is directly related to the allegations, and
- A statement that Parties who are members of a union are entitled to union representation throughout the Resolution Process.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, the notification will be presumptively delivered.

## 14. Resolution Timeline

Kean University will make a good faith effort to complete Resolution Process within 60-90 business days, including any appeals, which the Title IX Coordinator can extend as necessary for appropriate good cause. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and

rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, the University reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions. The University will promptly resume its Resolution Process as soon as feasible. During such a delay, the University will implement and maintain supportive measures for the Parties as deemed appropriate.

University action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## 15. Ensuring Impartiality

Any individual materially involved in the administration of the Resolution Process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the University Counsel.

The Resolution Process involves an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

## 16. Investigator Appointment

Once an investigation is initiated, the Title IX Coordinator appoints an Investigator(s) to conduct it. These Investigators may be members of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to the University's community.

## 17. Witness Role and Participation in the Investigation

Employees (not including Complainant and Respondent) are required to cooperate with and participate in the University's Investigation and Resolution Process. Student witnesses and witnesses from outside the Kean University community cannot be required to participate but are encouraged to cooperate with University investigations and to share what they know about a Complaint.

Interviews may be conducted in person, via online video platforms (e.g. Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

## 18. Interview Recording

It is standard practice for Investigators to create a record of all interviews pertaining to the Resolution Process. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties.

## 19. Evidentiary Considerations

The Investigator(s) and the Decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible.

Relevant Evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of this Policy.

Impermissible evidence, and questions seeking that evidence, will be excluded regardless of whether they are relevant. The following types of evidence are considered impermissible:

- (i) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

(ii) A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the University obtains that Party's or witness's voluntary, written consent for use in the Resolution Process; and

(iii) Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent. The fact of prior consensual sexual conduct occurred between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex-based harassment occurred.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

Within the limitations stated above, the investigation and determination can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

## 20. Respondent Admits Responsibility

At any point in the Resolution Process, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

## 21. Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. To do this, the Investigator(s) shall interview all relevant Parties and witnesses; obtain relevant evidence; and identify sources of expert information, as necessary. The Parties will be provided with equal opportunity to present fact witness and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible, as defined in Section 19 of these procedures.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

The University may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed and not necessarily in this

order:

- Determine the identity and contact information of the Complainant
- Identify all offenses implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the Parties
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
- Provide each interviewed Party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the Parties of any meeting or interview involving the other Party, in advance when possible
- When participation of a Party is expected, provide that Party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose, with sufficient time for the Party to prepare to participate
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary,
- Allow each Party the opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible,
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the Parties throughout the investigation
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding
- Ask the Parties to provide a list of questions they would like asked of the other Party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question
- Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation, to include Party and witness interviews and all relevant evidence
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all evidence obtained as part of the investigation, that is relevant to the allegations and not otherwise impermissible, for a review and comment period of ten (10) business days so that each Party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
- The Investigator may share the investigation report with the Title IX Coordinator and/or legal



counsel for their review and feedback

## 22. Administrative Resolution Process

The Administrative Resolution Process is used for all Complaints of sex discrimination, sex-based harassment, retaliation, and other prohibited conduct (as defined in Policy) or when Informal Resolution is either not elected or is unsuccessful.

The Administrative Resolution Process consists of a hand-off of the investigation report and all relevant evidence to the Decision-maker to make a finding and determine sanctions (if applicable).

At the discretion of Title IX Coordinator, the assigned Decision-maker will be an individual from the Resolution Process Pool, or other trained individuals either internal or external to the institution. Also at the discretion of the Title IX Coordinator, the Decision-maker may be the same person as the Title IX Coordinator or Investigator. Once the Decision-maker receives and reviews the file, they can recommend dismissal to the Title IX Coordinator, if they believe the grounds are met.

The Administrative Resolution Process typically takes approximately thirty (30) Business days to complete, beginning with the Decision-maker's receipt of the Draft Investigation Report. The Parties will be regularly updated on the timing and any significant deviation from this typical timeline.

### Investigator-led Questioning Meetings

- The Title IX Coordinator provides the Draft Investigation Report to the Decision-maker and the Parties simultaneously for review. The Decision-maker can then provide the Investigator with a list of relevant questions to ask the Parties or any witnesses.
  - To the extent credibility is in dispute and relevant to one or more of the allegations, the questions provided by the Decision-maker may also explore credibility.
- The Investigator will also ask each of the Parties to provide a proposed list of questions to ask the other Parties and any witnesses.
  - To the extent credibility is in dispute and relevant to one or more of the allegations, questions proposed by the Parties may also explore credibility.
  - All party questions must be posed during this phase of the process and cannot be posed later unless authorized by the Decision-maker.
  - The Investigator will share all party-proposed questions with the Decision-maker, who will finalize the list with the Investigator to ensure all questions are both relevant and permissible.
- The Investigator will then hold individual meetings with the Parties and witnesses to ask the questions posed by the Decision-maker, as well as the questions proposed by the Parties that have been deemed relevant and not duplicative, including questions intended to assess credibility. These meetings will be recorded and transcribed.
  - For any question deemed not relevant or duplicative, the Investigator will provide a rationale for not asking the question, either during the recorded meeting, or in writing (typically as an appendix to the Final Investigation Report).
- Typically, within three (3) Business days of the last of these meetings, the recordings or transcripts of them will be provided to the Parties for their review. The Parties will then have five (5) Business days to review these recordings or transcripts and propose any follow-up questions for the Investigator to ask.
- The Investigator will review the proposed questions with the Decision-maker to determine relevance and permissibility. If deemed necessary, the Investigator will then meet individually with the Parties or witnesses for whom there are relevant, and not duplicative, follow-up questions. These follow-up meetings will also be recorded, and the Parties will receive the recordings or transcripts of these

meetings. This final round of questioning is the last round permitted, unless permission is granted to extend by the Decision-maker.

- The Investigator will then incorporate any new, relevant evidence and information obtained through the Parties' review of the Draft Investigation Report, the questioning, and follow-up meetings into a Final Investigation Report.
- The Investigator will also respond in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report and incorporate relevant elements of the Parties' written responses, additional relevant evidence, and any necessary revisions into the Final Investigation Report.
- The Investigator will then share the Final Investigation Report with the Title IX Coordinator for their review and feedback.
- The Investigator will then provide the Title IX Coordinator with the Final Investigation Report and investigation file.

#### The Decision-maker's Determination

- The Title IX Coordinator will provide the Decision-maker, the Parties, and their Advisors with the Final Investigation Report (FIR) and investigation file, including the evidence and information obtained through the Investigator-led Questioning meetings.
- The Decision-maker will review the FIR, all appendices, and the investigation file.
- If the record is incomplete, the Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informal meetings with the Parties or any witnesses, if needed.
- Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions:
  - To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility. These meetings will be recorded, and the recording or transcript will be shared with the Parties.
  - At their discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker in making their findings. These meetings will be recorded, and the recording or transcript will be shared with the Parties.
- The Decision-maker will then evaluate relevant and not otherwise impermissible evidence for its persuasiveness and apply the preponderance of the evidence standard to make a determination on each of the allegations and, if applicable, any associated sanctions.
- **Timeline.** The Decision-maker's determination process typically takes approximately ten (10) Business days, but this timeframe can vary based on a number of factors and variables. The Parties will be notified of any delays.
- **Impact Statements.** Prior to a determination, the Title IX Coordinator will also provide the Parties with an opportunity to submit a written impact and/or mitigation statement. The Title IX Coordinator will review these statements upon receipt to determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Decision-maker has made determinations on the allegations. If there are any findings of a Policy violation, the Decision-maker will request the Impact Statements from the Title IX Coordinator and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.
- If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for reopening a Resolution Process at any time, and/or referring that information to another process for resolution.

## 23. Sanctions

Factors the Decision-maker may consider when determining a sanctions and responsive actions include, but are

not limited to:

- The nature, severity of, and circumstances surrounding the violation(s),
- The Respondent's disciplinary history,
- 
- The need for sanctions/responsive actions to bring an end to the sex discrimination, sex-based harassment and/or retaliation,
- The need for sanctions/responsive actions to prevent the future recurrence of sex discrimination, sex-based harassment and/or retaliation,
- The need to remedy the effects of the sex discrimination, sex-based harassment and/or retaliation on the Complainant and the community,
- The impact on the parties,
- The Respondent's acceptance of responsibility,
- Any other information deemed relevant by the Decision-maker(s).

The sanctions will be implemented as soon as it is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

A Party, witness, or others participating in the Resolution Process will not be sanctioned for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

#### *a. Student Sanctions*

The following are the common sanctions that may be imposed upon students singly or in combination:

- Written Warning to the Respondent that the conduct must stop and any continuation may be a basis for more severe action.
- Letter of Reprimand.
- Probation: Notice that further violation of the Policy may result in suspension or expulsion. Also, the Decision may place some additional restrictions on membership in student organizations and/or participation in activities or attendance at specific events or may establish special restitution and service requirements.
- Suspension:
  - Specific Period: Revocation of the privilege of attending the University and using its facilities for a specific period not to exceed two (2) academic years.
  - Indefinite Period: Revocation of the privilege of attending the University and using the facilities pending the satisfying of specific conditions. The Title IX Coordinator will determine whether the conditions have been satisfied.
  - Residence Hall Suspension: Revocation or restriction of privileges for the use of, access to, and/or residence in University Residence Halls.
- Facilities Restriction: Revocation or restriction of privileges for the use of some but not all University facilities.

- Expulsion: Permanent termination of student status and rights to be present on University property and attend/participate in University-sponsored events.
- Referral to civil or criminal authorities.

Any of the following may accompany a sanction:

- Restitution requiring individuals to restore or replace within a specified time, property which has been damaged, defaced, lost, or stolen.
- Service assignment requiring an individual to perform services for the community or the University.
- Referral to appropriate psychological or psychiatric service for evaluation, mandated assessment, or other special help.
- Fines for drug and alcohol violations as outlined in the [Drug and Alcohol Policy](#) and the [Annual Campus Security and Fire Safety Report](#).
- A Campus-Wide Notice of No Trespass will accompany a sanction of suspension or expulsion from the University.
- A Residence Life Notice of No Trespass will accompany any restriction imposed or related to residential living or visitation of the residence halls.
- Campus-Wide No Contact Order: The Title IX Coordinator, or other designated employee, may impose a Campus Wide No Contact Order between Parties when the fear of retaliation and/or harassment may be present. Specific instructions will accompany the Campus-Wide No Contact Order outlining to all Parties the expected behavior including face to face contact, correspondence, e-mail, instant message or telephone. Friends and relatives are also not permitted to have any contact on behalf of either Party.
- Educational assignments or training.

#### *b. Student Group and Organization Sanction*

The following are the common sanctions that may be imposed upon student groups or organizations singly or in combination:

- Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- Probation: An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of University funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- Suspension: Termination of student group or organization recognition and/or institutional support for a defined period of time not to exceed two (2) years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in University-related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the University.
- Expulsion: Permanent termination of student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.

- Loss of Privileges: Restricted from accessing specific University privileges for a specified period of time.
- Other Actions: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

*c. Employee Sanctions/Responsive Actions*

The Decision-maker shall make a recommendation for appropriate responsive actions to the Office of Human Resources for an employee who has engaged in sex discrimination, sexual harassment and/or retaliation. Responsive actions may include:

- Informal Counseling Memo
- Formal Counseling memo
- Written warning
- Official Written Reprimand
- Suspension (with or without pay)
- Demotion
- Fine
- Termination
- Tenure Charges (tenured faculty only)
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

**PLEASE NOTE:** The foregoing sanctions shall be subject to any applicable New Jersey Civil Service Commission Rules and Regulations, University Procedure, Policy and any applicable employment contracts and/or collective bargaining agreements.

## 24. Notice of Outcome

Within ten (10) business days of the conclusion of the Resolution Process, the Title IX Coordinator provides the Parties with a written outcome notification. The outcome notification will describe the alleged Policy violation(s), specify the finding for each alleged Policy violation, all applicable sanctions that the University is permitted to share pursuant to Federal or State law, other remedies provided to the Complainant or others, and a detailed rationale, written by the Decision-maker, supporting the findings to the extent the University is permitted to share under Federal or State law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Title IX Coordinator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official University records, or emailed to the Parties' University-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

If there is a determination that sex discrimination occurred, as appropriate, the Title IX Coordinator shall coordinate the provision and implementation of remedies to the Complainant and other persons identified as having had equal access to the University's education program or activity limited or denied by sex discrimination, coordinate the imposition of any disciplinary sanctions on the Respondent, including notification to the Complainant of any such disciplinary sanctions, and take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the University's education program or activity.

## 25. Withdrawal or Resignation Before Complaint Resolution

### A. **Students:**

Should a student Respondent decide to not participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from the University, the Resolution Process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, the University will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, the University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

When a student withdraws or leaves while the process is pending, the student may not return to the University in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Title IX Coordinator has discretion to dismiss the Complaint. The Registrar, Office of Admissions, and Office of Human Resources may be notified, accordingly. The University may also disclose unresolved Title IX Complaints of student-athletes to Kean Athletics and/or to other institutions the student transfers to in accordance with the requirements of the [NCAA Policy](#) and Kean Athletics procedures.

If the student Respondent takes a leave for a specified period of time (e.g., one semester or academic year), the Resolution Process may continue remotely. If found in violation, that student is not permitted to return to the University unless and until all sanctions, if any, have been satisfied.

### B. **Employees:**

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University or any campus of the University, and the records retained by the Title IX Coordinator will reflect that status. The Office of Human Resources shall be notified, accordingly.

## 26. Appeal of the Determination

The Title IX Coordinator will designate an Appeal Decision-Maker from the Pool, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-Maker will have been involved in the Resolution Process for the Complaint previously, including in any supportive measure challenge or dismissal appeal that may have been heard earlier in the process.

### ***a. Appeal Grounds***

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility or dismissal was made,;
3. The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

### ***b. Request for Appeal***

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within five (5) Business days of the delivery of the Notice of Outcome.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the Request for Appeal meets the grounds in this Policy, then the Appeal Decision-maker will notify all Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker in writing.

All other Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the Request for Appeal with the approved grounds and then be given five (5) Business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in this Policy and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their

responses, if any, within five (5) Business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified accordingly, in writing.

No Party may submit any new Requests for Appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-maker, who will promptly render a decision.

### ***c. Appeal Determination Process***

*In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.*

*Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so, and apply the Preponderance of the Evidence standard of proof.*

*An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).*

*The Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.*

### ***d. Appeal Outcome***

*An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Title IX Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-maker roles.*

*A Notice of Appeal Outcome letter ("Appeal Outcome") will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which the University is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent the University is permitted to share under federal or state law.*

*Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official institutional records, or emailed to the Parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.*

*Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.*



*If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the available appeal grounds.*

#### ***E. Sanction Status During the Appeal***

*Any sanctions imposed as a result of the determination are stayed (i.e. not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.*

*If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above in Section 7) for a “show cause” meeting on the justification for doing so must be permitted within two (2) Business days of implementation.*

## **27. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the University community that are intended to stop the sex discrimination, sex-based harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the Parties even if no Policy violation is found.

When no Policy violation is found, the Title IX Coordinator will address any remedies the University owes to the Respondent to ensure no effective denial of educational access.

The University will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the University’s ability to provide these services.

## **28. Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms**

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker(s), the Appeal

Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## 29. Recordkeeping

For a period of at least seven (7) years following the conclusion of the Resolution Process, Kean University will maintain records of:

1. Each sex discrimination, sex-based harassment and retaliation Resolution Process, including any Final Determination regarding responsibility or appeal and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the University's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to provide training to the Title IX Coordinator, Title IX Coordinator designee, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators and any person who is responsible for implementing the University's Resolution Process, or who has the authority to modify or terminate supportive measures. Kean University will make these training materials available for review upon request; and
7. All materials used to train all employees consistent with the requirements in the Title IX Regulations.

Kean University will also maintain any and all records in accordance with state and federal laws. Parties may request access to their Complaint file. The University will provide access or a copy within 45 days of the request. Appropriate redactions of personally identifiable information may be made before inspection, or any copy is shared.

## 30. Accommodations and Support During the Resolution Process

### Disability Accommodations

Kean University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's Resolution Process.

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with

the Office of Accessibility Services (students) or the Office of Human Resources ADA Coordinator (employees), as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full participation in the Resolution Process.

The University will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

## 31. Revision of Resolution Process Procedures

These procedures supersede any previous procedures addressing sex discrimination, sex-based harassment, and retaliation for incidents occurring on or after August 1, 2024. The Title IX Coordinator will regularly review and update these procedures. The Title IX Coordinator reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent governing laws, regulations or court holdings.

This document does not create legally enforceable protections beyond the protection of federal and state laws that frame such policies and codes, generally.

These procedures are effective August 1, 2024.

## APPENDIX A: DEFINITIONS

The following definitions apply to the Policy and Resolution Process:

- **Advisor.** Any person chosen by a Party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Process and advise the Party on that process.
- **Title IX Coordinator.** The person with primary responsibility for overseeing and enforcing the Policy and Resolution Process. As used in this Policy and procedures, the “Title IX Coordinator” also includes their designee(s).
- **Appeal Decision-maker.** The person who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met and directs responsive action(s) accordingly.
- **Complainant.** A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, or retaliation under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, retaliation, or other prohibited conduct under the Policy and who was participating or attempting to participate in the University’s education program or activity at the time of the alleged sex discrimination, sex-based harassment, retaliation, or other prohibited conduct.

A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant or the Title IX Coordinator, after making the determination specified in § 106.44(f)(1)(v), may also serve as a Complainant.

With respect to complaints of sex discrimination other than sex-based harassment, any student or employee; or any person other than a student or employee who was participating or attempting to participate in the University’s education program or activity at the time of the alleged sex discrimination can also be a Complainant

- **Complaint.** An oral or written request to the University that can objectively be understood as a request for the University to investigate and make a determination about the alleged Policy violation(s).
- **Confidential Employee.**
  - An employee whose communications are privileged or confidential under federal or state law. The employee’s confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
  - An employee whom the University has designated as confidential under this Policy for the purpose of providing services to persons related to sex discrimination, sex-based harassment, retaliation, or other prohibited conduct. If the employee also has a duty not associated with providing those services, the employee’s confidential status only applies with respect to information received about sex discrimination, sex-based harassment, retaliation, or other prohibited conduct in connection with providing those services; or

- An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination, sex-based harassment, retaliation, or other prohibited conduct. The employee’s confidential status only applies with respect to information received while conducting the study.
- **Day.** A Business day when the University is in normal operation. All references in the Policy to days refer to Business days unless specifically noted otherwise.
- **Decision-maker.** The person who reviews evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- **Education Program or Activity.** Locations, events, or circumstances where the University exercises substantial control over the context in which the sex discrimination, sex-based harassment, retaliation, or other prohibited conduct occurs and also includes any building owned or controlled by a student organization that the University officially recognizes.
- **Employee.** A person employed by the University either full- or part-time, including student employees when acting within the scope of their employment.
- **Final Determination.** A conclusion by the preponderance of the evidence that the alleged conduct did or did not violate the Policy.
- **Finding.** A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Informal Resolution.** A resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a Final Determination in the Resolution Process.
- **Investigation Report.** The Investigator’s summary of all relevant evidence gathered during the investigation. Variations include the draft Investigation Report and the Final Investigation Report.
- **Investigator.** The person(s) authorized by the University to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- **Knowledge.** When the University receives Notice of conduct that reasonably may constitute sex discrimination, sex-based harassment, retaliation, or other prohibited conduct in its Education Program or Activity.
- **Mandated Reporter.** A University employee who is obligated by Policy to share Knowledge, Notice, and/or Reports of sex discrimination, sex-based harassment, retaliation, or other prohibited conduct with the Title IX Coordinator.<sup>17</sup>

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<sup>17</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of persons with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

- **Notice.** When an employee, student, or third party informs the Title IX Coordinator of the alleged occurrence of sex discrimination, sex-based harassment, retaliation, or other prohibited conduct.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions.** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Relevant Evidence.** Evidence that may aid a Decision-maker in determining whether the alleged sex discrimination, sex-based harassment, retaliation, or other prohibited conduct occurred, or in determining the credibility of the Parties or witnesses.
- **Remedies.** Typically, post-resolution actions are directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the University's Education Program and Activity.
- **Resolution Process.** The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution and/or Administrative Resolution Process.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute sex discrimination, sex-based harassment, retaliation for engaging in a protected activity under this Policy, or Other Prohibited Conduct.
- **Sanction.** A consequence imposed on a Respondent who is found to have violated this Policy.
- **Sex.** Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- **Student.** Any person who has gained admission to the University.
- **Title IX Coordinator.** At least one official designated by the University to ensure ultimate oversight of compliance with Title IX and the University's Title IX program. References to the Title IX Coordinator throughout the Policy may also encompass a designee of the Title IX Coordinator for specific tasks.
- **Nondiscrimination Team.** The Title IX Coordinator, any deputy coordinators, and any member of the Resolution Process Pool.

## **APPENDIX B: STATEMENT OF RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or retaliation made in good faith to Kean University officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by University officials.
- The right to have University policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by University officials from reporting sex discrimination, sex-based harassment or retaliation to both on-campus and off-campus authorities.
- The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Kean University Department of Campus Police and Public Safety and/or other University officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.

- The right to a University-implemented no-contact order or a No Trespass Order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of sex discrimination, sex-based harassment and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location
  - Assistance from University staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options.
- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to provide the Investigator(s) and Decision-maker(s) with the identity of relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker(s), may be asked of any party or witness.
- The right to have inadmissible prior sexual history or irrelevant character evidence excluded by the Decision-maker.



- The right to review the relevant and not otherwise impermissible evidence obtained and to respond to that evidence.
- The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the Investigation Report for review, including all factual, policy, and/or credibility analyses performed, and all relevant and not otherwise impermissible evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, for at least ten (10) Business days prior to the Investigation Report being provided to the Decision-maker.
- The right to respond to the investigation report, including comments providing any additional relevant and not otherwise impermissible evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or Resolution Process.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received at least eight (8) hours of relevant annual training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings and interviews that are closed to the public.
- The right to petition that any University representative in the Resolution Process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant and not otherwise impermissible evidence.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.

- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the Resolution Process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the Resolution Process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.

## **APPENDIX C: NEW JERSEY CAMPUS SEXUAL ASSAULT VICTIM'S BILL OF RIGHTS (amended as of January 1, 2025)**

*Pursuant to "New Jersey Campus Sexual Assault Victim's Bill of Rights Act" and the "Crime Victim's Bill of Rights" (N.J.S.A. 18A:61E-2)*

### ***Introduction***

A college or university in a free society must be devoted to the pursuit of truth and knowledge through reason and open communication among its members. Academic communities acknowledge the necessity of being intellectually stimulating where the diversity of ideas is valued. Its rules must be conceived for the purpose of furthering and protecting the rights of all members of the university community in achieving these ends.

Applicable state and federal laws and institutional rules and regulations governing interpersonal behavior limit the boundaries of personal freedom. In creating a community free from violence, sexual assault and non-consensual sexual contact, respect for the individual and human dignity are of paramount importance. The State of New Jersey recognizes that the impact of violence on its victims and the surrounding community can be severe and long lasting. Thus, it has established this Bill of Rights to articulate requirements for policies, procedures and services designed to ensure that the needs of victims are met and that the colleges and universities in New Jersey create and maintain communities that support human dignity.

### ***Bill of Rights***

The following Rights shall be accorded to victims of sexual assault that occur:

- On the campus of any public or independent institution of higher education in the state of New Jersey, and
- Where the victim or alleged perpetrator is a student at that institution, and/or;
- When the victim is a student involved in an off-campus sexual assault.

### ***Human Dignity Rights***

- To be free from any suggestion that victims must report the crimes to be assured of any other guaranteed right and that victims should refrain from reporting crimes in order to avoid unwanted personal publicity;
- To have any allegations of sexual assault treated seriously; and the right to be treated with dignity and compassion;
- To be free from any suggestion that victims are responsible for the commission of crimes against them or any suggestion that victims were contributorily negligent or assumed the risk of being assaulted;
- To be free from any pressure from campus personnel to:
  - Report crimes if the victim does not wish to do so;
  - Report crimes as lesser offenses than the victim perceives the crime to be;
  - Refrain from reporting crimes.

### ***Rights to Resources on and Off Campus***

- To be notified of existing campus and community based medical, counseling, mental health and student services for victims of sexual assault whether or not the crime is formally reported to campus or civil authorities;
- To have access to campus counseling under the same terms and conditions as apply to other students in their institution seeking such counseling from appropriate campus counseling services;

- When applicable, no-cost access to the services of a sexual assault response team comprised of: a certified forensic nurse examiner, a confidential sexual violence advocate, and a law enforcement official as provided in accordance with the Attorney General's Standards for Providing Services to Victims of Sexual Assault, and the choice to opt into or out of any of the team's services;
- To be informed of and assisted in exercising:
  - Any rights to confidential or anonymous testing for sexually transmitted diseases, acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS, and/or pregnancy;
  - Any rights that may be provided by law to compel and disclose the results of testing of sexual assault suspects for communicable diseases.
- To have forensic medical evidence, if collected, retained for a minimum of five years, and to receive information about the status of the evidence upon request;
- To choose whether to participate in any investigation of the assault;
- To reasonable efforts to provide treatment and interviews in a language in which the victim is fluent and the right to be given access to appropriate assistive devices to accommodate disabilities that the victim may have, whether temporary or long term;
- To information and assistance in accessing specialized mental health services; protection from further violence; other appropriate community or governmental services, including services provided by the Victims of Crime Compensation Office; and all other assistance available to crime victims under current law;

### *Campus Judicial Rights During Campus Disciplinary Proceedings*

- To be afforded the same access to legal assistance as the accused;
- To be afforded the same opportunity to have others present that is allowed the accused;
- To be notified of the outcome of the sexual assault disciplinary proceeding against the accused.

### *Legal Rights*

- To have any allegation of sexual assault investigated and adjudicated by the appropriate criminal and civil authorities of the jurisdiction in which the sexual assault occurred;
- To receive full and prompt cooperation and assistance of campus personnel in notifying the proper authorities;
- To receive full, prompt, and victim-sensitive cooperation of campus personnel with regard to obtaining, securing, and maintaining evidence, including a medical examination when it is necessary to preserve evidence of the assault;
- To be apprised of the availability and process by which a court may order the taking of testimony from a victim via closed circuit television in accordance with section 1 of P.L.1985, c.126 (C.2A:84A-32.4); and
- To be apprised of the availability and process by which to seek protections through a temporary or final protective order under the "Victim's Assistance and Survivor Protection Act," P.L.2015, c.147 (C.2C:14-13 et al.), if the victim believes that the victim is at risk for re-victimization or further harm by the perpetrator.

### *Additional Rights Regarding DNA Profiles and Evidence*

- A victim of a sexual assault offense shall have the right to be informed:
  - of whether a DNA profile of an assailant was obtained from the processing of forensic medical evidence in a sexual assault case;
  - of whether a DNA profile of an assailant has been entered into any data bank designed or intended to be used for the retention or comparison of case evidence;
  - of whether there is a match between the DNA profile of an assailant obtained in the sexual assault case and any DNA profile contained in any data bank designed or intended to be used for the retention or comparison of case evidence. This paragraph shall not apply if disclosure would impede or compromise an ongoing investigation; and
  - when sexual assault evidence is submitted to a forensic laboratory, when the evidence is compared against any data bank, and of the results of the comparison. This paragraph shall not apply if disclosure would impede or compromise an ongoing investigation.
- Upon the request of a victim of a sexual assault offense, the law enforcement agency with the primary responsibility for investigating that sexual assault case shall inform the victim of the status of the processing of all evidence collected in that case. The law enforcement agency may require that the victim's request be in writing.
- The law enforcement agency may respond to a victim's request with a written communication or by electronic mail, if an electronic mail address is available. A law enforcement agency is not required to communicate with the victim regarding the status of the processing of crime scene evidence unless the victim has made a specific request to do so.
- A sexual assault victim may designate another person of the victim's choosing to receive information requested by the sexual assault victim or any notice required.
- The law enforcement agency with the primary responsibility for investigating a sexual assault case shall provide information to a victim pursuant to this section in a timely manner and, upon request of the victim, advise the victim of any significant changes in the information of which the law enforcement agency is aware. To receive notice under this section, the victim shall inform the law enforcement agency of the name, address, telephone number, and electronic mail address of the person to whom the information should be provided, and of any changes to the information. A person accused or convicted of a crime against the victim shall not have standing to object to any failure to comply with this section. The failure to inform a sexual assault victim with notice or information pursuant to this section shall not be the basis for setting aside the conviction or sentence.

### *Campus Intervention Rights*

- To require campus personnel to take reasonable and necessary actions to prevent further unwanted contact of victims with their alleged assailants;
- To be notified of the options for and provided assistance in changing academic and living situations if such changes are reasonably available.

### *Statutory Mandates*

Each campus must guarantee that this Bill of Rights is implemented. It is the obligation of the individual

campus governing board to examine resources dedicated to services required and to make appropriate requests to increase or reallocate resources where necessary to ensure implementation.

Each campus shall make every reasonable effort to ensure that every student at that institution receives a copy of this document.

Nothing in this "Campus Assault Victim's Bill of Rights" shall be construed to preclude or in any way restrict any public or independent institution of higher education in the state from reporting any suspected crime or offense to the appropriate law enforcement authorities.

## APPENDIX D: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms *privacy*, *confidentiality*, and *privilege* have distinct meanings.

- **Privacy.** Means that information related to a complaint will be shared with a limited number of University employees who “need to know” in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. All employees who are involved in the University’s response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and state law.
- **Confidentiality.** Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by the University as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Title IX Coordinator. The Confidential Resource will, however, provide the Complainant with the Title IX Coordinator’s contact information, assist the Complainant in reporting, if desired, and provide them with information on how the Office Of Affirmative Action Title IX Office can assist them. With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities. Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.
- **Privilege.** Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court orders release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege. The University treats employees who have the ability to have privileged communications as Confidential Employees.

Kean University reserves the right to determine which University officials have a legitimate educational interest in being informed about student-related incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties’ Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties’ rights and privacy, and release is governed by the University’s unauthorized disclosure procedures.

The University may contact students' parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student prior to doing so.

The University may also disclose information regarding sanctions issued to student-athlete Respondents under this Policy and information regarding unresolved Title IX Complaints of student-athletes to Kean Athletics and/or to other institutions the student transfers to in accordance with the requirements of the [NCAA Policy](#) and Kean Athletics procedures.



## **APPENDIX E: VIOLENCE RISK ASSESSMENT (VRA)**

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A ***Violence Risk Assessment (VRA)*** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other administrators.

A VRA occurs in collaboration with KUBIT (for a student) or Employee Relations (for an employee) and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of ***risk factors*** that escalate the potential for violence;
2. a determination of ***stabilizing influences*** that reduce the risk of violence;
3. a contextual ***analysis of violence risk*** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of ***intervention and management*** approaches to reduce the risk of violence.

To assess a student's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through KUBIT. KUBIT will perform the assessment, according to the specific nature of the Title IX case.

In cases involving employees, the Title IX Coordinator will initiate the violence risk assessment process upon referral to a VRA-qualified individual, who may be a member of the KUBIT team and will perform the assessment, according to the specific nature of the Title IX case and report the assessment to the Director of Human Resources or designee.

The assessor will follow the process for conducting a violence risk assessment and will rely on a consistent, research-based, reliable system that allows for the operationalization of the risk levels.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric,<sup>20</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>21</sup> The Extremist Risk Intervention Scale (ERIS),<sup>22</sup> Looking Glass,<sup>23</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>24</sup> Historical Clinical Risk Management (HCR-20),<sup>25</sup> and MOSAIC.<sup>26</sup>

The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

In cases involving students, after KUBIT conducts a VRA, it will make a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community. The Title IX Coordinator shall refer the matter to the appropriate University Official for appropriate action.

In cases involving employees, the Office of Human Resources - Employee Relations will make an initial determination whether an employee should be immediately placed on paid administrative leave and/or be reassigned pending the VRA. The Office of Human Resources- Employee Relations will then refer the recommendation to the Director of Human Resources for appropriate action pending the VRA. If the VRA-qualified individual determines that there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community, then the Office of Human Resources shall take appropriate action.

<sup>20</sup> [www.nabita.org/tools](http://www.nabita.org/tools)

<sup>21</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)

<sup>22</sup> [www.nabita.org/resources/assessment-tools/eris/](http://www.nabita.org/resources/assessment-tools/eris/)

<sup>23</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass)

<sup>24</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>25</sup> [hcr-20.com](http://hcr-20.com)

<sup>26</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)

## **APPENDIX F: TRAINING FOR MEMBERS OF THE RESOLUTION PROCESS POOL**

All Investigators, Decision-makers, Appeal Decision-makers, and other persons who are responsible for implementing Kean University's Title IX Policy and procedures will receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX, and annually thereafter. Materials will not rely on sex stereotypes. Training topics include, but are not limited to:

- The role of the Title IX Coordinator
- The scope of the University's Prohibited Sex Discrimination, Sex-Based Harassment, and Retaliation Policy for All Faculty, Students, Employees, and Third Parties Policy
- The University's Resolution Process
- How to conduct a Title IX Resolution Process consistently, including issues of disparate treatment, disparate impact, sex discrimination, sex-based harassment, quid pro quo, hostile environment harassment, and retaliation
- How to conduct investigations that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and confirmation bias
- Treating Parties equitably
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all prohibited conduct
- How to conduct an investigation and Resolution Process, including Administrative Resolutions, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudice of the facts at issue, conflicts of interest, and bias for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally
- Any technology to be used
- The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under the Title IX Regulations
- Issues of relevance and creating an Investigation Report that fairly summarizes relevant and not impermissible evidence
- How to determine appropriate sanctions in reference to all forms of sex discrimination, sex-based harassment, and/or retaliation allegations

- Recordkeeping
- Training for Informal Resolution Facilitators on the rules and practices associated with the University's Informal Resolution Process
- Supportive Measures
- Clery Act/VAWA requirements applicable to Title IX
- The University's obligations under Title IX
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with the Policy
- Reasonable modifications and specific actions to prevent sex discrimination, sex-based harassment and retaliation and ensure equal access for pregnancy or related conditions in accordance with [University policy](#)
- Any other training deemed necessary to comply with Title IX

## **APPENDIX G: CAMPUS SUPPORT SERVICES & EXTERNAL RESOURCES**

As a member of the Kean University community, your safety and well-being are our number one concern. For that reason, we want to make certain that if you or someone you know is in a crisis situation or has thoughts of death, dying or suicide, support is available. If you need immediate help, call 911. On the Union campus, you may contact Kean University Department of Public Safety & Police at (908) 737-4800. You may also visit the nearest emergency room.

If you need to speak with someone confidentially about your concerns and options for help, the following resources can be contacted 24 hours a day, 7 days a week:

- **National Suicide and Crisis Lifeline: Call 988**
- **New Jersey Hopeline: Call (855) 654-6735**
- **Veterans Crisis 24-hour Hotline: Call 988, then Press 1; or Text 838255**
- **Uwill Teletherapy Services: Call (833) 646-1526**

As a Kean University student, the following resources provide confidential support at no additional cost to you during business hours (Monday through Friday 9 a.m. to 5 p.m. with additional services listed below):

- Kean Counseling Center located in the Wellness Center at Downs Hall, Room 127 on the Union campus: Call (908) 737-4850 or email [counseling@kean.edu](mailto:counseling@kean.edu). The Kean Counseling Center has extended hours until 7 p.m. on Tuesdays and Wednesdays. For additional information, please contact the [Kean Counseling Center](#).
- Kean University has partnered with Uwill, to provide students with free mental health options, offering students immediate access to teletherapy and wellness programming through its easy-to-use online platform. For additional information, please visit [Uwill services](#) or call (833) 646-1526.
- Ocean County College Counseling Center located in the Library Room 010 on the Ocean County College campus: Call (732) 255-0386 or email [counselingservices@ocean.edu](mailto:counselingservices@ocean.edu). If you need urgent assistance after normal business hours or on weekends or holidays, contact Ocean County Counseling Center's psychiatric emergency phone service at (732) 286-2441. Additional information can be accessed at the [Ocean County College Counseling Center](#).
- Kean Skylands Campus, students are eligible for all services offered at the Kean Counseling Center on the Union Campus. Please contact (908) 737-4850 or email [counseling@kean.edu](mailto:counseling@kean.edu).

**Kean University is committed to the health and wellness of its community. We urge you to reach out for help by utilizing one of the resources above if you, or someone you know are struggling.**



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