



## Ohio Administrative Code

### Rule 3342-5-16.2 Administrative policy regarding complaints of Title IX sexual harassment.

Effective: August 14, 2020

---

(A) Purpose. Kent state university prohibits unlawful discrimination and harassment and strives to provide a safe and non-discriminatory environment for all students, employees, applicants, and visitors. This policy sets forth the expectations and responsibilities for maintaining an environment free of unlawful discrimination on the basis of sex in university education programs or activities, in accordance with Title IX of the Education Amendments of 1972 and Title 34 part 106 of the Code of Federal Regulations. Sexual harassment, including sexual assault, dating violence, domestic violence, and stalking is strictly prohibited by this policy. Additionally, retaliation against those whose report sexual harassment or participate in the process is prohibited. Inquiries about the application of title IX to the university may be referred to the universitys title IX coordinator, and to the U.S. department of education, office for civil rights.

#### (B) Definitions

(1) Complainant. An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(2) Consent. An action defined as the voluntary, unambiguous and uncoerced agreement to participate in an act, the nature and full extent of which is understood by all parties. Silence or lack of resistance cannot be the sole factor in determining consent. Consent may be given verbally or nonverbally. All parties are responsible for confirming that their counterparts consent is maintained throughout the act and is present before engaging in a new act. A person may be incapable of giving consent due to physical incapacitation, physical or mental disability, threat, coercion, the influence of alcohol or drugs, or age.

(3) Coercion. When an individual unreasonably pressures another to engage in sexual activity, despite responses that the conduct is unwelcome or unwanted. Coercion includes elements of pressure, duress, cajoling, and compulsion. The pressure to participate may also be considered unreasonable when the pressuring individual is in a position of influence or authority over the other



individual.

(4) Incapacitation. A state where a person lacks the capacity to reasonably appreciate the nature or extent of the situation because of their physical or mental status, developmental disability, or alcohol or drug use.

(5) Formal complaint. A document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the university investigate the allegation of sexual harassment. The document may be a physical or electronic submission (such as by electronic mail or through the online portal at [www.kent.edu/sss](http://www.kent.edu/sss)) that contains the complainants physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

(6) Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(7) Sexual harassment. Conduct on the basis of sex that satisfies one or more of the following:

(a) An employee of the university conditioning the provision of an aid, benefit, or service of the university on an individuals participation in unwelcome sexual conduct.

(b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the universitys education program or activity.

(c) Sexual assault, which includes the following:

(i) Rape (except statutory rape). The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(ii) Sodomy. Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because



of their temporary or permanent mental or physical incapacity.

(iii) Sexual assault with an object. To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(iv) Fondling. The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(v) Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(vi) Statutory rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(d) Dating violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(e) Domestic violence. Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(f) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.



(8) Supportive measures. Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

(9) Title IX coordinator. The university administrator with authority and responsibility for overseeing the university's implementation of Title IX law and regulations and this policy. The Title IX coordinator's contact information may be located at [www.kent.edu/hr/title-ix](http://www.kent.edu/hr/title-ix).

(C) Scope. This policy applies to complaints of sexual harassment as defined above, alleged to have occurred in an education program or activity of the university, against a person in the United States.

(D) Grievance process. The following grievance process to resolve complaints under this policy is expected to occur within ninety calendar days from the date the complaint is filed. The Title IX coordinator or designee may suspend or extend this time period by providing written notice to parties citing the reason for the action. Parties may request a temporary delay of the grievance process or the limited extension of time frames for good cause by written request to the Title IX coordinator. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

(1) Confidentiality. The university shall treat as confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may



be permitted by law, or to carry out any investigation, hearing, or proceeding in this policy.

(2) Retaliation prohibited. No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Complaints alleging retaliation may be filed according to the grievance procedures in this policy.

(3) Supportive measures. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures for both parties as applicable, before or after the filing of a formal complaint or where no formal complaint has been filed. The university shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the university to provide the supportive measures, and as allowed by law.

(4) Formal complaint. A formal complaint may be filed with the Title IX coordinator in person, by mail, or by electronic mail by using the contact information for the Title IX coordinator or online form at [www.kent.edu/sss](http://www.kent.edu/sss). At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the university. Where the Title IX coordinator signs a formal complaint, the Title IX coordinator is not a complainant or otherwise a party.

(a) Consolidation of formal complaints. The university may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular party, complainant, or respondent include the plural, as applicable.

(5) Notice. Upon receipt of a formal complaint, the university shall provide the following written notice to the parties who are known: notice of this grievance process, including any informal resolution process; and notice of the allegations of sexual harassment potentially constituting sexual harassment as defined above, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.



If, in the course of an investigation, the university decides to investigate allegations about the complainant or respondent that are not included in the notice provided, the university shall provide notice of the additional allegations to the parties whose identities are known.

(6) Dismissal of formal complaint.

(a) The Title IX coordinator shall dismiss formal complaints that do not meet the following criteria. Formal complaints will be dismissed promptly in writing to the parties, and may be considered under another university policy, if applicable.

(i) The alleged incident must have occurred in a Kent state university education program or activity. Education program or activity includes locations, events, or circumstances over which the university exercises substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.

(ii) The alleged incident must have occurred against a person in the United States.

(iii) At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the university with which the formal complaint is filed.

(iv) The conduct alleged in the formal complaint must constitute sexual harassment as defined in this policy.

(b) The Title IX coordinator may dismiss a formal complaint, promptly in writing to the parties, if at any time during the investigation or hearing: a complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the university; or specific circumstances prevent the university from gathering evidence sufficient to reach a determination.

(7) Interim actions. The university may remove a student respondent from an education program or



activity on an emergency basis after an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. The student respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. The university may place an employee respondent on administrative leave during the pendency of this grievance process.

(8) Informal resolution. At any time prior to reaching a determination regarding responsibility, the university may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.

(a) Both parties voluntary, written consent to the informal resolution process is necessary. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

(b) Informal resolution is not an option for resolving allegations that an employee sexually harassed a student.

(9) Investigation. The Title IX coordinator or designee is responsible for investigating eligible formal complaints.

(a) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the investigator and not on the parties.

(b) The respondent is not considered responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

(c) The university shall not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so for a grievance process under this section, or as permitted by law.



(d) The parties shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

(e) All parties are free to discuss the allegations under investigation or to gather and present relevant evidence.

(f) All parties shall have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. However, the advisor may not directly participate in the proceedings, with the exception of the cross-examination portion of any hearing.

(g) Any party whose participation is invited or expected shall receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

(h) Both parties shall receive an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

(i) Prior to completion of the investigative report, the investigator shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties shall have ten calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report.

(j) The investigator shall make all evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

(k) The investigator shall create an investigative report that fairly summarizes relevant evidence and, at least ten calendar days prior to any hearing, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.





(10) Hearings.

(a) Formal complaints that are not resolved informally or dismissed will result in a live hearing. If the respondent is a student, the hearing will be convened by the office of student conduct in accordance with that office's procedures. If the respondent is an employee, a hearing will be convened by the vice president of human resources and conducted in accordance with that office's procedures. Live hearings may be conducted with all parties physically present in the same geographic location, or participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

(b) At the live hearing, the decision-maker(s) shall permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing shall be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

(c) At the request of either party, the hearing may occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

(d) Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) shall first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(e) If a party does not have an advisor present at the live hearing, the university shall provide without fee or charge to that party, an advisor of the university's choice to conduct cross-examination on behalf of that party.

(f) If a party or witness does not submit to cross-examination at the live hearing, the decision-



maker(s) shall not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

(g) Credibility determinations shall not be based on a person's status as a complainant, respondent, or witness.

(h) The hearing convener shall create an audio or audiovisual recording, or transcript, of any live hearing. Such recording will be available to the parties for inspection and review upon written request to the convener.

(11) Findings and Sanctions. The hearing decision-maker(s) shall issue a written determination regarding responsibility. To reach this determination, the preponderance of the evidence standard (whether it is more likely than not that the alleged conduct occurred) will be used. The written determination shall include:

(a) Identification of the allegations potentially constituting sexual harassment;

(b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(c) Findings of fact supporting the determination;

(d) Conclusions regarding the application of the university's policies to the facts;

(e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;

(f) For respondents who are students and unrepresented employees, any disciplinary sanctions the university imposes on the respondent;



(g) Information regarding whether remedies designed to restore or preserve equal access to the university's education program or activity will be provided to the complainant; and

(h) The university's procedures and permissible bases for the complainant and respondent to appeal.

(12) The written determination will be provided to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the university provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX coordinator is responsible for effective implementation of any remedies.

(13) For respondent employees in a recognized bargaining unit, the hearing process will determine whether a policy violation occurred, and will determine sanctions with consideration to any applicable terms of the collective bargaining agreement. The determination of policy violation can be appealed following the process in this policy. Appeals of any sanctions should follow the applicable process in the collective bargaining agreement. Any determinations from those processes will be communicated to the complainant and respondent simultaneously and in writing.

(14) Sanctions for student respondents are detailed in the code of student conduct and range from required educational courses to dismissal. Sanctions for employees range from required educational courses to termination.

(E) Appeal. An appeal from a determination regarding responsibility, and from the university's dismissal of a formal complaint or any allegations therein, is available to both parties under the same circumstances and procedures.

(1) An appeal may only be made on the following bases:

(a) Procedural irregularity that affected the outcome of the matter;

(b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and



(c) 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 affected the outcome of the matter.

(2) Appeal procedure:

(a) Either party may appeal a hearing determination within seven calendar days.

(b) Determinations regarding student respondents shall follow the appeal process in the code of student conduct. Determinations regarding employee respondents shall appeal in writing to the vice president of human resources and follow that offices procedure.

(c) The other party(ies) will be notified in writing when an appeal is filed.

(d) The decision-maker(s) for the appeal shall not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX coordinator;

(e) Both parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

(f) A written decision will be issued simultaneously to both parties within thirty calendar days describing the result of the appeal and the rationale for the result.

(F) Conflict of interest. The Title IX coordinator, any investigator, decision-maker, or any person facilitating a process under this policy shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent specifically.