



## KECK GRADUATE INSTITUTE

### POLICY AGAINST DISCRIMINATION AND HARASSMENT

#### I. POLICY

Keck Graduate Institute ("Institute" or "KGI") is committed to maintaining an educational, work and/or living environment that is free of prohibited discrimination and harassment based on race, color, creed, sex (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), gender (which includes gender identity and expression, and transgender status), age, sexual orientation, national origin (including whether or not the individual has a driver's license granted under specific sections of the California Vehicle Code), ancestry, religion (which includes all aspects of religious belief, observance, and practice including religious dress and grooming practices), marital or registered domestic partner status, military and service/veteran status, physical or mental disability, genetic information, medical condition (which includes AIDS or HIV status, genetic characteristics, cancer or a record or history of cancer), or any other legally protected class (collectively referred to as "protected characteristics" or "protected class"). The Institute also prohibits discrimination and harassment based on the perception that someone is a member of a protected class or is associated with a member of a protected class.

#### II. PURPOSE OF POLICY

The purpose of this policy is to (1) make clear that discrimination and harassment based on protected characteristics is prohibited and will not be tolerated; (2) familiarize all members of the KGI community with the definition of prohibited discrimination and harassment and the forms it can take; (3) communicate to all members of the community the established accessible points of contact to use if they witness or are a victim of any discrimination or harassment; (4) outline the procedures that will be followed in response to complaints of discrimination and harassment; and (5) identify responsibilities of various individuals under this policy.

#### III. SCOPE OF POLICY

This Policy applies to all KGI students, administrators, faculty, trustees, teaching/research assistants, staff, and student organizations, as well as prospective students, employment applicants, visitors, and guests of the Institute. Persons who are not KGI employees but perform work at KGI for its benefit (such as contractors and temporary employees) are also protected and required to abide by this policy. This policy applies to "off-campus" activities that are Institute-related, such as Institute functions hosted in private homes, off-site conferences and meetings, and Institute- sponsored travel. KGI reserves the right to apply this policy to incidents of sexual misconduct by persons listed above which occur off-campus and are unrelated to Institute activities, but which may directly impact or have a significant effect upon KGI or the KGI community.

## IV. DEFINITIONS

### A. Discrimination

Prohibited discrimination is defined as any decision, act, or failure to act that improperly interferes with or limits a person's or group's ability to participate in or benefit from the services, privileges, or activities of the Institute, or otherwise adversely affects a person's employment, education, or living environment when such decision, act, or failure to act is based on a protected characteristic (or based on a perception that an individual has such characteristics or associates with others who have, or are perceived to have, such characteristics).

Examples of discrimination include, without limitation: (1) denying a person admission or employment based upon a protected characteristic, (2) denying raises, benefits, or promotions on the basis of a protected characteristic, or (3) subjecting a person to different academic standards or employment conditions because of a protected characteristic.

### B. Harassment

Harassment is a form of discrimination and is defined as any conduct directed toward an individual or class of individuals based on a legally protected characteristic (or a perception that an individual or class of individuals have such characteristics or associate with others who have, or are perceived to have, such characteristics) which is sufficiently severe or pervasive to alter or interfere with an individual's work or academic performance, or which creates an intimidating, hostile, or offensive, work, educational, or living environment.

Conduct does not constitute harassment in violation of this policy unless it occurs based on a legally protected characteristic or trait and is sufficiently severe or pervasive to alter or interfere with an individual's work, academic performance or participation in a Institute activity.

Harassment can take many forms and will vary with the particular circumstances. Examples of harassment prohibited by this policy may include, without limitation: (1) verbal conduct, such as epithets, derogatory jokes or comments, or slurs directed at an individual or group of individuals because of a protected characteristic; (2) visual displays, such as derogatory posters, photography, cartoons, or drawings not protected by policies on academic freedom and freedom of expression which ridicule or demean an individual on the basis of a protected characteristic; and/or (3) physical conduct, including unnecessary and unwanted touching and intentionally blocking normal movement.

Whether particular physical, non-verbal, or verbal conduct constitutes harassment in violation of this policy will depend upon all of the circumstances involved, the context in which the conduct occurred, and the frequency, severity, and pattern of the conduct.

Conduct alleged to constitute harassment will be evaluated according to the objective standard of a reasonable person. Thus, conduct that is objectionable to some, but that

is not severe or pervasive enough to create an objectively intimidating, hostile or offensive environment, is beyond the purview of this policy.

The fact that someone did not intend to harass an individual is no defense to a complaint of harassment. Regardless of intent, it is the effect and characteristics of the behavior that determine whether the conduct constitutes harassment.

Sexual harassment in particular may include all of the prohibited actions above, as well as other unwelcome conduct, such as requests for sexual favors, conversations containing sexual comments, and other unwelcome sexual advances. KGI, in concert with the other Claremont Colleges, has adopted a separate policy dealing with sexual harassment and other forms of sexual misconduct, including sexual assault, dating violence, domestic violence and stalking (including cyber-stalking). The Claremont Colleges Title IX Policy ("Title IX Policy") can be found at <https://services.claremont.edu/titleix/>.<sup>1</sup>

Information concerning the Title IX Policy, Consortium, KGI and community resources available to aid victims of sexual harassment/misconduct can be found at <https://services.claremont.edu/titleix/> and obtained from the Institute's Title IX Coordinator, and the Deputy Title IX Coordinator

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<sup>1</sup> If a determination is made that a complaint of sexual harassment/misconduct is not subject to the Title IX Policy, but such behavior, if true, would constitute a violation of KGI Policy, which includes sexual harassment as defined under California law, KGI shall review and adjudicate such a complaint in conformity with the requirements of Sections 66281.8 and 67386 of the California Education Code, and the definition of sexual harassment, sexual violence, rape, sexual battery, and/or sexual exploitation in California law. See e.g., Cal. Educ. Code §66262.5. The requirements of California Education Code section 66281.8, as updated or amended, are hereby incorporated by this reference.

## V. GRIEVANCE PROCEDURES

Any person who believes that they have been subjected to behavior in violation of this policy may choose to avail themselves of the following procedures, except those complaints involving allegations of sexual harassment, sexual misconduct, and sexual violence are governed, in the first instance, by the Title IX Policy. The grievance procedures set forth below will only apply to such claims where the Title IX Policy does not apply.

Because KGI has an obligation to address discrimination and harassment, it cannot guarantee that the identity of a complainant will be treated as completely confidential where it would conflict with its obligations to provide a safe or nondiscriminatory work, educational or living environment. Persons who wish to seek advice or assistance or to discuss options for dealing with issues involving discrimination or harassment on a strictly confidential basis may do so by speaking with licensed counselors, clergy, medical providers in the context of providing medical treatment, and rape crisis counselors who, except in very narrow circumstances specified by law, will not disclose confidential communications. Students who wish to speak to a licensed counselor on a confidential basis may contact the Claremont Consortium's Monsour Counseling and Psychological Services. The Employee Assistance Program is a resource for faculty and staff on a confidential basis.

The following procedures will be followed on receipt of a grievance pursuant to this policy:

1. Individuals who believe they have been subjected to discrimination or harassment may file a formal grievance by completing **KGI's Grievance Form**, or **KGI's Incident Reporting Form**. Upon receipt, the Institute will initiate an investigation to determine whether a violation of this policy has occurred. In certain circumstances, the Institute may initiate an investigation on its own, even in the absence of a formal complaint from an individual and regardless of any applicable time limitations for filing a complaint.
2. Complaints must be made within one year of the most recent alleged act of discrimination or harassment. There are no time limits associated with

complaints concerning sexual harassment or sexual misconduct. Although the failure to initiate a complaint in accordance with the terms of this policy, including the time limitations set forth therein, shall constitute a waiver of the complainant's right to utilize the grievance procedures described herein, the Institute nevertheless reserves the right to pursue an investigation as it deems appropriate whenever and however it receives allegations of or information related to discrimination, harassment, or retaliation.

3. Grievances under this procedure should be directed to any of the following: Human Resources or Student Affairs.
4. A grievance should be submitted in writing; however, verbal grievances will also be accepted. In such cases, written documentation will be required as a follow-up. The written grievance should include details describing the conduct that gave rise to the complaint, the name(s) of the individual(s) against whom the grievance is made (the "respondent"), and the names of any witnesses
5. Upon receipt of any grievance under these procedures, the person receiving the grievance shall immediately notify appropriate Institute officers, supervisors, or others who have a need to know of the existence of the grievance. Grievances made against students shall be referred to the Provost and Vice President of Academic Affairs. Grievances made against faculty, staff, or other persons shall be referred to the Assistant Vice President and Chief Human Resources Officer. If the Title IX Coordinator, Provost and Vice President of Academic Affairs, or Assistant Vice President and Chief Human Resources Officer are the subject of the complaint, KGI's Vice President of Finance and Administration and Chief Financial and Operating Officer will designate someone to act in their place with respect to the administration of this policy.
6. Investigation of grievances against students shall be conducted by a neutral internal or external investigator (or team of investigators) designated by the Provost and Vice President of Academic Affairs, in accordance with the Code of Student Conduct. Investigations of grievances against faculty, staff, and others shall be conducted by a neutral internal or external investigator (or team of investigators) designated by the Assistant Vice President and Chief Human Resources Officer in accordance with the procedures described below.
7. Before any investigation of the grievance is undertaken, the respondent shall be informed of the grievance, the identity of the complainant, and provided with a summary of the grievance. The complainant and respondent will also be notified of an investigator's identity and provided with an opportunity to object to the investigator's selection on the basis of actual or perceived conflict of interest, bias, or prejudice.

8. When appropriate, before or during an investigation, the Institute may take actions, in the form of supportive measures, to protect the rights of the parties and/or other members of the KGI community. Supportive measures include, but are not limited to, counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. In the case of students, such measures shall not be punitive and applied to the fullest extent possible to avoid depriving any student of their education.
9. In the course of the investigation, the investigator will interview the complainant, respondent, witnesses, and gather any other information or documentation the investigator determines is necessary to conduct an adequate, reliable, and impartial investigation. The complainant and respondent will both have an equal opportunity to share information with and have their information considered by the investigator, including providing the names of witnesses and questions to ask the other party or any witnesses. The investigator will consider all such information when determining the persons to interview and the questions to ask, but these decisions remain in the investigator's discretion. The investigator may also choose to interview other witnesses not identified by the parties.
10. The complainant and respondent may be accompanied by a "support person/advisor" during all phases of the grievance process. The support person/advisor maybe a friend, mentor, family member, attorney, member of the KGI community, or any other person, as long as they are not also a witness or otherwise a participant in the grievance resolution proceedings. The role of the "support person/advisor" at any investigative meeting is that of an observer and/or advisor. Although reasonable attempts will be made to schedule proceedings consistent with the support person/advisor's availability, the process will not be unduly delayed to schedule the proceedings at the convenience of the support person/advisor.
11. Every effort shall be made to complete the investigation within thirty (30) calendar days of the date the formal grievance is made or as soon thereafter as practical under the circumstances and depending on the complexity of the case. The investigator will provide the complainant, the respondent, and appropriate Institute officers, supervisors, and others with a need to know, with notice of any extension and give them a new timetable for completion of the investigation
12. A finding that a violation of this policy has occurred shall be based on a preponderance of evidence. Preponderance of evidence means that the information and facts establish that a violation of this policy "more likely than not" occurred.

13. The investigator will report his/her/their findings to the parties and the appropriate Institute officers.
14. Where the investigator concludes that a violation of this policy has occurred, the appropriate Institute officers will take prompt and appropriate remedial action, including disciplinary action. Depending on the circumstances, disciplinary action may include, but is not limited to: warnings (verbal and written); censure; loss of privileges; removal from graduate housing; probation; suspension; dismissal/expulsion from the Institute, or termination of employment. Discipline for a violation of this policy need not be progressive, so a first violation of this policy may warrant suspension or discharge.
15. A complainant or respondent who is not satisfied with the outcome of the investigation may appeal in writing within ten (10) business days of the date on which he/she/they is notified of the outcome. Appeals regarding grievances about a faculty, staff, (or other member of the community) shall be made in writing to the President. Appeals regarding grievances about a student shall be made in writing to the Provost and Vice President of Academic Affairs.

Appeals will be considered only when new evidence that was not reasonably available at the time of the formal investigation becomes available, or if the grievant or respondent believes that the grievance process was not followed in accordance with KGI's Grievance Policy.

If both the complainant and respondent appeal, the appeals will be considered concurrently. Note, in the event of an appeal, sanctions will normally be held in abeyance pending the outcome of the appeal. If, however, the Institution determines that there may exist a threat to the safety or welfare of the Institution community, sanctions will take effect immediately.

Appeals are decided by the President (or President's designee) based on written submissions. Appeal decisions will be issued within fifteen (15) business days or as soon as practical. All appeal decisions are final.

#### A. Respect for the Rights of the Complainant and Respondent

KGI recognizes the sensitive nature of discrimination and harassment grievances both for the complainant and the person(s) against whom the grievance is made. All parties to the grievance should treat the matter under investigation with discretion and respect for the reputation of all parties involved.

**B. Location of Records**

A copy of the investigative file (which will consist of the initial complaint, the final investigative report, including a record of the remedial/disciplinary action taken, if any, and any documents created or used during the investigation), shall be maintained in the Office of Student Affairs for grievances against students; in the Office of Human Resources for grievances against faculty, staff, or others for the period of time mandated by KGI's record retention policy and applicable law.

Should a violation of this policy be found, a record of the grievance and disciplinary action taken shall be made part of the personnel or student file of the person(s) found to have violated this policy. In the event that the investigation does not result in a finding of violation of this policy, no record of the grievance or investigation will become a part of any individual's personnel or student file.

Note, whether or not a grievance is made under these Formal Resolution Procedures, a record of all reports, grievances, and investigations involving sexual harassment, sexual misconduct, or sexual violence and outcomes, shall be maintained by the Title IX Coordinator for the period of time mandated by KGI's record retention policy and applicable law.

**VI. RETALIATION**

Retaliation against any individual for seeking assistance or bringing a discrimination or harassment grievance through the processes described in this policy is unlawful and is strictly prohibited. Similarly, any person who participates or cooperates in any manner in an investigation or any other aspect of the process described herein shall not be retaliated against. Retaliation is itself a violation of this policy and is a serious separate offense. Retaliation can be committed by any individual or group of individuals. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence, or other forms of harm to others.

**VII. FALSE ACCUSATIONS**

Accusations of discrimination and harassment typically have injurious far-reaching effects on the careers and lives of accused individuals. Allegations of discrimination and harassment must be made in good faith and not out of malice. Knowingly making a false allegation of discrimination or harassment is itself a violation of this policy and a basis for disciplinary action up to and including dismissal/expulsion from the Institute or termination of employment. Failure to prove a claim of discrimination or harassment is not the equivalent of a knowingly false accusation.

**VIII. ACADEMIC FREEDOM**

The Institute adheres to principles of academic and expressive freedom. Nothing in this policy shall be construed to limit the legitimate exercise of academic and expressive freedom, including but not limited to written, graphic, or verbal expression that can reasonably be

demonstrated to serve a legitimate educational purpose. Nor shall this policy be interpreted or applied in a manner that is inconsistent with California Education Code § 94367.

#### **IX. RESPONSIBILITY**

All faculty, staff, students and other members of KGI community are responsible for assuring that their conduct does not violate this policy. If administrators, managers, supervisors, department chairs, faculty members, and staff know discrimination or harassment is occurring, receive a complaint of discrimination or harassment, or obtain other information indicating possible discrimination or harassment, they must take immediate steps to ensure that the matter is addressed.<sup>3</sup> Administrators, managers and supervisors have the further responsibility of preventing and eliminating discrimination and harassment within the areas they supervise.

#### **X. ADDITIONAL RECOURSE**

Discrimination, harassment and retaliation are violations of federal and state law. This policy is intended to supplement and not replace such laws. Whether or not the internal grievance procedures described in this policy are utilized, a Institute employee who believes that they are the victim of discrimination, harassment, or retaliation may file a complaint with the California Department of Civil Rights, <https://calcivilrights.ca.gov/>, or the United States Equal Employment Opportunity Commission, <http://www.eeoc.gov/>. In addition, students and/or employees may file a complaint with the Office of Civil Rights, United States Department of Education, <http://www.ed.gov/ocr/>.

Persons who believe they are victims of discrimination, harassment, or retaliation should be aware that both state and federal law impose time deadlines for the filing of complaints, and that the use of the internal complaint procedures described in this policy will not change such filing deadlines.

In connection with harassment claims involving sexual harassment and sexual misconduct, other forms of recourse are available which are described in detail in the Title IX Policy.

#### **XI. MODIFICATIONS**

The Institute retains the authority to adapt or modify the complaint resolution process, for good cause and absent substantial conflict with the procedures and processes contained in this Policy, as part of the responsibility to ensure an equitable and prompt process for all parties.

#### **XII. DISSEMINATION OF THIS POLICY**

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<sup>3</sup>All employees (including faculty, staff, administrators, student workers) and proctors, who have responsibilities for student welfare are required to promptly share with the Title IX Coordinator any report of sexual harassment or sexual misconduct which they receive or of which they become aware. For purposes of sexual harassment complaints, a "Responsible Employee" under this policy has the same definition as in California Education Code section 66281.8.

The office of Human Resources and the office of Student Affairs are charged with the responsibility for disseminating this policy to faculty/staff, and students, respectively. A copy of this policy shall also be posted on the Institute's website. The Institute shall also take such other steps as are appropriate to develop educational and training programs designed to promote a work, educational and living environment that is free of prohibited discrimination and harassment.

**XIII. SOURCES OF POLICY**

California Education Code sections 200, et seq.; California Sex Equity in Education Act, California Education Code sections 66250, et seq.; California Education Code section 67386, California Education Code section 94385; California Fair Employment and Housing Act, California Government Code sections 12900, et seq.; Age Discrimination in Employment Act of 1967, Title 29 of the United States Code, section 621; Title VI of the Civil Rights Act of 1964, Title 42 of the United States Code, section 2000d; Title VII of the Civil Rights Act of 1964, Title 42 of the United States Code, sections 2000e, et seq.; Section 504 of the Rehabilitation Act of 1973, Title 29 of the United States Code, section 794; Americans with Disabilities Act of 1990, Title 42 of the United States Code, sections 12101, et seq.; Title IX of the Education Amendments of 1972, Title 20 of the United States Code, sections 1681, et seq.; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Title 20 of the United States Code, sections 1092(f), et seq.; and Violence Against Women Reauthorization Act of 2013 (VAWA), Title 34 of the United States Code, section 1229.