

1 **WHEREAS,** The following resolution was passed by Student Senate on November 19, 2020

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3 **BE IT RESOLVED THAT**

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5 **SECTION 1.** Faculty Senate joins S.G.A in their recommendation regarding the Implementation of the
6 Updated Title IX At Kansas State University appended below.

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8 **SECTION 2.** Upon passage by Faculty Senate and signature of the Faculty Senate President, a copy of
9 this resolution shall be sent to the Vice President of Student Life and Dean of Students
10 Dr. Thomas Lane, Chief Diversity and Inclusion Officer Dr. Bryan Samuel, Provost Dr.
11 Charles Taber, Acting Director of the Office of Institutional Equity and Title IX
12 Coordinator Cleopatra Magwaro, Chief of Staff and Director of Community Relations
13 Linda Cook, Executive Director of End Rape on Campus Kenyora Parham, CARE Office
14 Director Clara Kientz, CARE Prevention Specialist Jessica Henault, CARE Graduate
15 Research Assistant Julia Hagen, Fraternity and Sorority Life Director Jordan Kocher, Co-
16 National Director of the Every Voice Coalition Lily James, the members of the
17 President’s Committee on the Status of Women, the members of the K-State Sexual
18 Assault Task Force, and University President Richard B. Myers.

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20 **SIGNED:** Angela Hubler, Clara Kientz, Jessica Henault, Elizabeth Dodd, Michelle Toews,
21 Anthony Ferrarro, Erin Yelland, Amber Vennum, Joy Robbins, Michele Janette,
22 Bradford Wiles

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26 **RESOLUTION 20/21/45**

27 **RECOMMENDATIONS REGARDING THE**
28 **IMPLEMENTATION OF THE UPDATED TITLE**
29 **IX AT KANSAS STATE UNIVERSITY**

30 **BY:** Michael Arnold, Maggie Billman, Andrew Booze, Nathan Bothwell, Madison
31 Brown, Bob Brummett, Lily Colburn, Billy Croslow, Michael Dowd, Jeff Ebeck,
32 Morgan Garrett, Creighton Glasscock, Ashley Grills, Rachel Grollmes, Sara
33 Haggard, Hannah Heatherman, Ashton Hess, Durga Jambunathan, Cameron
34 Koger, Vedant Kulkarni, Lane Lundeen, Marta Richenburg, Natalia Rodriguez,
35 RJ Salmen, Kristen Schau, Carson Tjelmeland, and Tel Wittmer

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37 **WHEREAS,** The Title IX statute protects individuals from discrimination based on sex in
38 educational institutions that receive funding from the federal government;

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40 **WHEREAS,** The Department of Education, under the leadership of the Secretary of
41 Education Betsy DeVos, released the federally updated Title IX policy on May
42 6th of 2020;

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44 **WHEREAS,** Kansas State University was required to comply with these updated federal
45 regulations by August 14th of 2020;

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47 **WHEREAS,** According to the Kansas State University Climate Survey of 2018, which
48 consisted of 1,586 respondents, 28.2 percent of respondents reported being
49 the victim of sexual violence or attempted sexual violence, 46.7 percent
50 reported being the victim of sexual harassment, and 28.4 percent reported
51 being a victim of stalking;

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WHEREAS, Kansas State University has a responsibility to students to address sexual harassment, violence, and stalking in the most accurate, equitable, and compliant manner possible under Title IX;

WHEREAS, According to the Kansas State University Office of Institutional Equity’s (OIE) most recent Annual Report of Title IX reporting from July 1, 2019 to June 3, 2020, there was an average of 337 reports per academic year from 2015-2020, with violations identified in 21.3 percent of all reports;

WHEREAS, In said report, violations were identified in Unique Cases (cases falling outside the jurisdiction of the Title IX process, which includes those occurring in Greek Life) in 4.4 percent of all Unique Case reports;

WHEREAS, Regarding sexual violence statistics on college campuses in the United States: sexual violence against women is more prevalent than robbery, as a woman in college is twice as likely to be sexually assaulted than robbed; however, for college-age individuals, only 20 percent of female students report, meaning that 4 out of 5 sexual assaults are unreported on college campuses;

WHEREAS, Furthermore, 21 percent of transgender, gender-nonconforming, or genderqueer students are sexually assaulted annually; moreover, 5-6 percent of male college students are sexually assaulted in college;

WHEREAS, 90 percent of the time, the perpetrator is someone the survivor knows, making it difficult to continue seeing that person day-to-day (according to studies funded by the Department of Justice);

WHEREAS, False reports only account for 2-10 percent of all sexual assault reports: the same amount of false reports as any other crime (according to the National Sexual Violence Resource Center);

WHEREAS, Reporting and harboring a culture where students feel safe reporting is critical on college campuses, as evidence suggests that the majority of perpetrators on college campuses are serial sexual assailants;

WHEREAS, These statistics represent a disconnect between the national averages and the Kansas State Title IX records regarding the number of reports warranting the use of the Title IX process (i.e. were within the jurisdiction of Title IX) versus the number of investigations in which violations were found;

WHEREAS, This demonstrates that more focus should be put on encouraging survivors to come forward and making the process as trauma-informed as possible to avoid retraumatizing those involved who have experienced sexual violence;

WHEREAS, The individuals involved in this process are defined as: the complainant, who filed the report; the respondent, who is the subject of the report; an advisor, a person selected by each party to represent them during this process; and

100 the decision-maker (called the “hearing officer” at K-State), who makes the
101 final decision and decides which questions are acceptable;

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103 **WHEREAS,** The federal updates to Title IX include the following: a narrower definition of
104 sexual harassment; clarification that the Title IX policy does not apply to
105 incidents occurring outside of the U.S.; and requires the following process: a
106 live, recorded hearing in which both parties are each represented by their
107 advisor (who can be any person of their choosing) in front of the hearing
108 officer;

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110 **WHEREAS,** The federal Title IX’s new definition of sexual harassment is “Unwelcome
111 conduct determined by a reasonable person to be so severe, pervasive and
112 objectively offensive that it effectively denies a person equal access to the
113 University’s educational program or activity”;

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115 **WHEREAS,** This definition’s use of subjective language, like “objectively offensive” and “a
116 reasonable person” are hard to quantify, making it narrower and more
117 vague;

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119 **WHEREAS,** This kind of vague, non-definitive wording in the federal Title IX policy
120 makes it is more important than ever that to clarify the new Title IX process
121 and make it equitable and understandable for all parties involved;

122
123 **WHEREAS,** Kansas State University administration held a Title IX forum to educate those
124 interested in the implementation of the federal Title IX updates at the
125 university level, which was recorded upon multiple requests from the CARE
126 office;

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128 **WHEREAS,** Unlike every other recorded university forum, it was deleted after 2 weeks;

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130 **WHEREAS,** The reasoning for the deletion was that it could implicate the university in
131 future lawsuits, despite the subject of the forum being Kansas State
132 University’s own policy;

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134 **WHEREAS,** Despite the institutional discretion to allow parties to interact indirectly in
135 different rooms or through other methods, the Kansas State University Title
136 IX hearing process will take place over Zoom where cameras are required to
137 be on;

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139 **WHEREAS,** When questioned on how to avoid retraumatizing survivors when using
140 Zoom as the medium for Title IX hearings, Title IX director Scott Jones
141 suggested that survivors put a Post-It note over their screen to avoid viewing
142 their abuser;

143
144 **WHEREAS,** The federally required hearing process involves interaction and cross-
145 examination (either direct or indirect, upon the discretion of the university)
146 between parties, which will be retraumatizing for survivors according to

147 multiple experts in sexual violence, including K-State’s Center for Advocacy,
148 Response, and Education (CARE);
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150 **WHEREAS,** President Myers admitted at the K-State Title IX forum that he believes this
151 hearing process will deter survivors from coming forward or reporting;
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153 **WHEREAS,** Rice University’s Title IX hearing process includes the option of an in-person
154 hearing, or the use of an unspecified video platform that will “enable
155 participants simultaneously to see and hear each other;”
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157 **WHEREAS,** Rice University’s Title IX process utilizes three “Title IX navigators:”
158 individuals who have extensive training and experience working with
159 survivors;
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161 **WHEREAS,** These navigators can accompany either party to any investigative or hearing
162 matters and ensure a constant, trauma-informed presence during this
163 process;
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165 **WHEREAS,** Rice University’s Title IX hearings have time limits to avoid burdensome
166 hearings, and the process has very strict hearing decorum to avoid
167 unnecessary aggression and argumentation, ensuring the most professional
168 and straightforward experience for all individuals involved;
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170 **WHEREAS,** The University of Kansas’ Title IX hearing process includes an in-person,
171 Zoom, or hybrid option, in which the hybrid option would place each party in
172 a different room;
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174 **WHEREAS,** The University of Kansas has trained advocates available to both
175 complainants and respondents to offer support, explain the process, answer
176 questions outside of meetings, and provide a sounding board after meetings
177 with the university’s OIE equivalent: the Office of Institutional Opportunity &
178 Access;
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180 **WHEREAS,** To avoid overwhelming either party, Kansas University offers both a four-
181 page Rights and Resources form, and interview rooms (designed by the KU
182 Sexual Assault Prevention and Education Center, and funded by the Student
183 Senate) containing many stress-relieving resources to be used by those
184 experiencing trauma, whether that be complainants, respondents, or
185 witnesses;
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187 **WHEREAS,** Both the University of Kansas and Rice University allow each party a
188 “support person” of their choosing to accompany them to investigative and
189 hearing matters, to further ensure each party’s comfort during this difficult
190 process;
191

192 **WHEREAS,** After the federal Title IX updates were released, a small focus group at
193 Kansas State University was created and tasked with implementing these
194 new regulations at the university level;

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196 **WHEREAS,** That small focus group excluded the CARE office and other key organizations,
197 such as Counseling Services, with the necessary expertise to implement the
198 federal regulations in the most equitable manner possible for both
199 complainants and respondents;
200

201 **WHEREAS,** When questioned about CARE's exclusion from the small focus group, K-State
202 administration stated that because of CARE's role as an advocacy group, they
203 could not be unbiased, making the university non-compliant with the federal
204 regulations;
205

206 **WHEREAS,** In actuality, nowhere in the federal Title IX regulations does it state that
207 advocacy organizations, or any "biased" group, cannot participate in the new
208 policy implementation or would make the institution non-compliant;
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210 **WHEREAS,** The federal regulations specifically mention that the university has the
211 discretion to appoint advocacy groups to the implementation process;
212

213 **WHEREAS,** The CARE office is a great asset to Kansas State University through the
214 services they provide to survivors of sexual violence;
215

216 **WHEREAS,** By not including CARE in the implementation process, K-State has done a
217 great disservice to those who may decide to go through with the Title IX
218 process in the future;
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220 **WHEREAS,** After admitting at the K-State Title IX forum they believe the new Title IX
221 process will retraumatize survivors, K-State administration cited the CARE
222 office as their primary resource for those who are retraumatized;
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224 **WHEREAS,** The K-State Administration, therefore, denied the CARE office the
225 opportunity to participate in the implementation of a policy that its officers
226 will now have to address the repercussions of;
227

228 **WHEREAS,** OIE requested that the CARE office provide training for the necessary
229 individuals involved in the Title IX process (such as advisors and hearing
230 officers), but gave explicit instructions and limitations on how to do so,
231 restricting their ability to fully utilize their expertise;
232

233 **WHEREAS,** CARE's description in K-State's Title IX policy states that when a survivor
234 comes to their office, "[a CARE staff member] will encourage the person to
235 make a report under the Policy," not mentioning that everything shared with
236 members of the CARE office is confidential;
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238 **WHEREAS,** This language may deter students from utilizing this vital campus resource;
239

240 **WHEREAS,** When updating the K-State Title IX policy, OIE reached out to the CARE office
241 regarding any updates they may like to add and CARE provided a description
242 more accurately fitting their procedure before the given deadline;

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244 **WHEREAS,** None of these updates or the guidance provided by CARE was added to the K-
245 State Title IX Policy;
246
247 **WHEREAS,** The Title IX policy, both federal and at K-State, specifically state the need for
248 a decision-maker (or “hearing officer”) to make the final decision and rule on
249 what questions are permissible during the hearing process;
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251 **WHEREAS,** The hearing officer position is a discretionary aspect of the Title IX policy,
252 meaning that Kansas State University can decide who can be a decision-
253 maker and whether or not that position can be held by a single person or
254 constitute a panel;
255
256 **WHEREAS,** Kansas State University has elected to appoint a single decision-maker, but
257 the Title IX director has stated that with support from the Student Senate and
258 sufficient evidence, this discretionary decision can be changed to appoint a
259 hearing-officer panel;
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261 **WHEREAS,** The reasoning given for not selecting a panel of hearing officers in favor of a
262 single officer was convenience, with the Title IX director citing the need for
263 expensive training and lined-up schedules being too difficult to coordinate;
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265 **WHEREAS,** The CARE office will be offering officer and advisor training free of charge,
266 and has offered to record training videos to more easily accommodate the
267 preparation of panel of hearing officers;
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269 **WHEREAS,** A panel of decision-makers allows both parties to be evaluated more
270 equitably and avoids giving a single individual the power of making this
271 impactful decision;
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273 **WHEREAS,** Kansas University implemented a panel of decision-makers (chaired by a
274 faculty or staff member with a J.D.) as opposed to an individual decision-
275 maker in their Title IX policy;
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277 **WHEREAS,** According to the SGA Attorney General Ashton Hess: “One of the strongest
278 parts of our judicial program is allowing students to be heard by a board of
279 their peers. It allows the student body to have more of a voice on their
280 campus, as well as allowing for more due process”;
281
282 **WHEREAS,** Incidents that occur outside of the United States do not fall within the
283 jurisdiction of the federal updated Title IX policy, but students studying
284 abroad could have “recourse in the event of sexual harassment or sexual
285 assault,” because universities are “free to adopt disciplinary systems to
286 address sexual misconduct committed outside the United States, to protect
287 their students from such harm, and to offer supportive measures such as
288 mental health counseling or academic adjustments for students impacted by
289 misconduct committed abroad”;
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291 **WHEREAS,** OIE has not yet developed a policy addressing Title IX violations that occur
292 outside of the United States;
293

294 **WHEREAS,** It is stated in Rice University’s Title IX policy that matters not within the
295 jurisdiction of Title IX can be reviewed under the Student Code of Conduct,
296 Human Resource policies, or other such protocols; for example, in the case of
297 a Title IX violation occurring outside the United States, the incident would be
298 reviewed under the Rice University Student Code of Conduct;
299

300 **WHEREAS,** Kansas University has two procedures: the Title IX Resolution Process and
301 the Discrimination Complaint Resolution Process (DCRP), in which the DCRP
302 would be used to address both off-campus cases and cases that occur abroad;
303

304 **WHEREAS,** Via the current system, reports are only seen by the Title IX director, who
305 alone decides whether to move forward with an investigation depending on
306 whether it is “in the best interest of Kansas State University,” or designate
307 that the report does not fall within Title IX’s jurisdiction;
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309 **WHEREAS,** At Rice University, the Title IX coordinator consults with two deputy Title IX
310 coordinators, one of whom is an Associate Dean and the other helps to run
311 the Athletic Department;
312

313 **WHEREAS,** In K-State’s current Greek Life system, members of Greek Life are forced to
314 investigate their organization’s Title IX violations, putting an immense
315 burden on these students while there is already an office designated to
316 perform these investigations;
317

318 **WHEREAS,** While the Office of Student Life or CARE can offer all survivors supporting
319 measures (regardless of a Title IX process), Greek Life Title IX investigations
320 cannot provide any sanctions for the respondent like an on-campus Title IX
321 hearing would, consistently forcing the complainant to take action if their
322 safety or mental health is still threatened by said respondent;
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324 **WHEREAS,** The federal Title IX policy requires compliance from all public universities
325 lest they be subject to potentially losing federal funding;
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327 **WHEREAS,** The federal Title IX policy explicitly includes incidents in off-campus
328 buildings owned or controlled by a recognized student organization in the
329 scope of “education program or activity”;
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331 **WHEREAS,** The federal Title IX policy states “where a postsecondary institution has
332 officially recognized a student organization, the recipient’s Title IX
333 obligations apply to sexual harassment that occurs in buildings owned or
334 controlled by such a student organization, irrespective of whether the
335 building is on campus or off campus, and irrespective of whether the
336 recipient exercised substantial control over the respondent and the context
337 of the harassment outside the fact of officially recognizing the fraternity or
338 sorority that owns or controls the building”;

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WHEREAS, This means that as long as the student organization in question is recognized by the university, Title IX procedures should apply to locations owned or controlled by that organization, therefore including Kansas State University's Greek Life within its Title IX jurisdiction;

WHEREAS, By not investigating Greek Life Title IX reports nor counting them as on-campus incidents, Kansas State University is currently not in compliance with the federal Title IX regulations;

WHEREAS, If a report designated to be under Kansas State University's Title IX policy jurisdiction was made today, the process would not be able to begin because training is not currently in place and individuals have not been selected to fill the designated positions;

WHEREAS, This is despite the fact Title IX reports have been filed this school year, but none have required further investigation;

WHEREAS, Kansas State University was required to comply with this process by August 14, 2020, as stated above, making the university non-compliant with the federal regulations;

WHEREAS, Through all of these implementation and policy decisions, it can be argued that protecting survivors from further re-traumatization and providing justice was not the university's main goal in this process, but rather to keep survivors from coming forward and further discourage reporting; and

WHEREAS, The Kansas State University Student Governing Association values transparency, streamlined education, and outreach regarding sexual harassment on and off campus and Kansas State University's Title IX policy.

BE IT RESOLVED THAT:

SECTION 1. The Student Governing Association asks that Kansas State University take additional measures to ensure the most professional possible experience for both parties during the federally required, live, recorded hearing process, including using a medium that allows cross-examination without requiring face-to-face interaction (virtually or in person) to protect survivors from re-traumatization and the presence of a constant, trauma-informed resource available to support both parties during this process.

SECTION 2. The Student Governing Association asks that Kansas State University involve the CARE office in all future endeavors regarding Title IX, allow its officers to fully utilize their expertise and creativity in creating the trauma-informed training requested by OIE and necessary for this process, and allow CARE to update their description and procedure as defined in the Kansas State University Title IX policy.

387 **SECTION 3.** The Student Governing Association requests that Kansas State University
388 Title IX policy and procedure be revised to consist of a panel of decision-
389 makers (or “hearing officers”) to act as a “jury of peers” to both parties in
390 place of a single individual, consisting of an undergraduate student, graduate
391 student, and a member of faculty or staff.

393 **SECTION 4.** The Student Governing Association requests that the Kansas State University
394 Office of Institutional Equity develop a policy addressing Title IX violations
395 that occur outside of the United States regarding faculty, staff, or students.

397 **SECTION 5.** The Student Governing Association asks that decisions made on whether or
398 not to move forward with reports sent to the Office of Institutional Equity be
399 reviewed and seconded by a separate party other than Scott Jones or another
400 member of that office.

402 **SECTION 6.** The Kansas State University Student Governing Association asks that the
403 Office of Institutional Equity conduct thorough investigations off campus—
404 including within Greek Life organizations. This request is consistent with the
405 Student Governing Association’s previous Resolution 16/17/05.

407 **SECTION 7.** The Student Governing Association requests that Kansas State University
408 finalize its Title IX process by designating university-provided advisors and
409 forming a panel of hearing-officers.

411 **SECTION 8.** Upon passage by the Student Senate and signature of the Student Body
412 President, a copy of this resolution shall be sent to Rice University Student
413 Association’s Director of Interpersonal Violence Policy Izzie Karohl, Rice
414 University STRIVE Director and Student Body President Maddy Scannell,
415 Kansas University Office of Institutional Opportunity & Access Director and
416 Title IX Coordinator Joshua Jones, the Vice President of Student Life and Dean
417 of Students Dr. Thomas Lane, Chief Diversity and Inclusion Officer Dr. Bryan
418 Samuel, Provost Dr. Charles Taber, Current Director of the Office of
419 Institutional Equity and Title IX Coordinator Scott Jones, Future Director of
420 the Office of Institutional Equity and Title IX Coordinator Cleopatra Magwaro
421 Chief of Staff and Director of Community Relations Linda Cook, Executive
422 Director of End Rape on Campus Kenyora Parham, CARE Office Director Clara
423 Keintz, Prevention Specialist Jessica Henault, University President Richard B.
424 Myers, SGA Attorney General Ashton Hess, CARE Graduate Research
425 Assistant Julia Hagean, Fraternity and Sorority Life Director Jordan Kocher,
426 Co-National Director of the Every Voice Coalition Lily James, the members of
427 the President’s Committee on the Status of Women, and the members of the
428 K-State Sexual Assault Task Force.

431 **FS RESOLUTION in support was approved on December 8th, 2020.**

433 **Mindy Markham**
434 **Faculty Senate President**

