

**Subject: Sex Discrimination and Sexual Misconduct**

1. Purpose .....	2
2. Policy .....	2
2.1. Applicability .....	3
2.2. Notice of Nondiscrimination .....	3
2.3. Title IX Coordinator.....	4
2.4. Sexual Misconduct Prevention Education & Healthy Relationships Committee	4
2.5. Sexual Violence Incident Review Committee .....	4
2.6. Reporting Incidents.....	4
2.7. Confidentiality and Anonymous Reports.....	6
2.8. Handling of Reports and Investigations .....	8
2.9. Interim Measures.....	8
2.10. Written Notification of Rights and Options .....	9
2.11. Resolution of Complaints.....	9
2.12. Retaliation .....	10
2.13. Amnesty .....	10
2.14. Sanctions & Corrective Actions .....	10
2.15. Appeals .....	12
2.16. Timely Warnings.....	12
2.17. Support Services .....	12
2.18. Education and Awareness .....	12
2.19. Academic Freedom and Free Speech .....	13
2.20. False Allegations .....	13
2.21. Consensual and Familial Relationships.....	13
2.22. Record Keeping.....	14
3. Responsibilities.....	14
4. Procedures .....	14
4.1. Sexual and Domestic Violence Procedures.....	15
4.2. Reporting Incidents.....	16
4.3. Formal Resolution Process .....	17

4.3.1. Complainant’s Initial Meeting with the Title IX Coordinator..... 18  
4.3.2. Respondent’s Initial Meeting with the Assigned Title IX Coordinator ... 18  
4.3.3. Title IX Coordinator’s Initial Determination..... 19  
4.3.4. Appointment of the Investigator and Conduct of the Investigation ..... 20  
4.3.5. Determination of Title IX Coordinator and Corrective Action Report.... 22  
4.3.6 Appeal..... 24  
4.4. Informal Resolution Process..... 24  
4.5. Education & Awareness and Support Services ..... 25  
5. Definitions ..... 26  
6. References ..... 28  
7. Review Periodicity and Responsibility ..... 29  
8. Effective Date and Approval ..... 29  
9. Review and Revision History ..... 30  
[Appendix A: Sexual Misconduct Complaint Form](#)  
[Appendix B: Title IX College & Campus Resources](#)

**1. Purpose**

The purpose of this policy is to establish that Tidewater Community College (TCC) prohibits discrimination, harassment, sexual assault, domestic violence, dating violence, stalking, and retaliation and to set forth procedures by which such allegations shall be filed, investigated, and resolved.

**2. Policy**

Tidewater Community College is committed to providing an environment that is free from harassment and discrimination based on any status protected by law. This policy supplements the following general policy statement set forth by the VCCS: This institution promotes and maintains educational opportunities without regard to race, color, sex, ethnicity, religion, gender, age (except when age is a bona fide occupational qualification), disability, national origin, or other non-merit factors. This policy also addresses the requirements under the [Violence Against Women Reauthorization Act of 2013](#), (also known as the Campus SaVE Act).

This policy is not intended to substitute or supersede related criminal or civil law. Individuals should report incidents of sexual and domestic violence, dating violence, and stalking to law enforcement authorities. Criminal and civil remedies are available in addition to the potential remedies that the college may provide.

Tidewater Community College shall not tolerate sexual misconduct by any employee, student, or third party (e.g., contractors or visitors), or groups thereof. The college

considers sexual assault and sexual harassment to be forms of misconduct that undermine the integrity of the teaching, learning, and workplace relationships. No student, employee, or third party should be subjected to unsolicited and unwelcome sexual overtures or conduct, of either a verbal or physical nature. All reported instances of sexual misconduct shall be investigated. TCC shall provide a prompt, fair, and impartial investigation and resolution. Executive staff, campus provosts, deans of student services, and other supervisors shall receive annual training on sexual misconduct issues and how to conduct an investigation and hearing process that protects the rights of all parties and the safety of victims.

### **2.1. Applicability**

This policy shall apply to all campus community members, including students, faculty, staff, and third parties (e.g., contractors and visitors). Conduct that occurs off campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy, e.g. if off-campus harassment has continuing effects that create a hostile environment on campus.

This policy shall apply to the personal conduct of an employee while functioning in the course and scope of employment and to any sexual misconduct that adversely impacts a college employee's ability to perform his or her assigned duties and responsibilities. As required in [TCC Policy 3106](#) (Reference and Background Checks), any TCC employee convicted of a sexual offense is required to report such conviction to his/her immediate supervisor and to the Associate Vice President for Human Resources within five (5) days of the conviction.

This policy shall also apply to TCC students in their relations with other TCC students or employees and in connection with any academic, educational, extracurricular, athletic, or other program of TCC, whether on campus or associated with a college-sponsored activity at another location.

### **2.2. Notice of Nondiscrimination**

As a recipient of federal funds, Tidewater Community College is required to publish a notice of nondiscrimination on the basis of sex. Such notice shall be published on the college's website and in the college's catalog and in other publications, as appropriate. That notice shall be in the following format:

As a recipient of federal funds, Tidewater Community College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"), which prohibits discrimination on the basis of sex in educational programs or activities, admission and employment. Under certain circumstances, sexual misconduct, sexual harassment, and similar conduct constitute sexual discrimination prohibited by Title IX. Inquiries concerning the application of Title IX may be referred to the College's Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights. The Title IX Coordinator is Dr. Michael Summers, whose office is located at the Green Administration Building in

Norfolk, Suite 623, and may be contacted by phone at 822-7122 or by email at [msummers@tcc.edu](mailto:msummers@tcc.edu).

### **2.3. Title IX Coordinator**

The Title IX Coordinator shall be solely responsible for overseeing the prompt, fair, and impartial investigation and resolution of complaints filed with the college. The Interim Vice President for Student Affairs shall be trained and serve as the college's Title IX Coordinator. Campus deans of student services shall be trained and serve as Deputy Title IX Coordinators for incidents of sexual misconduct involving students, whether as victims or respondents.

### **2.4. Sexual Misconduct Prevention Education & Healthy Relationships Committee**

The Sexual Misconduct Prevention Education & Healthy Relationships Committee shall serve in an advisory capacity to the College's Title IX Coordinator. Annually, the College President shall appoint college faculty and staff to the committee. The committee will be charged with making recommendations and assisting with the development and implementation of educational & awareness programs that address sexual misconduct and related matters.

### **2.5. Sexual Violence Incident Review Committee**

The Sexual Violence Incident Review Committee shall perform those functions delineated in the following sections of this policy and its associated procedure. The Title IX Coordinator shall serve as the chair and convening authority for the committee. The committee shall be comprised of the following TCC employees:

- Interim Vice President for Student Affairs/Title IX Coordinator
- Campus Provost (of the student victim's "home campus" or with cognizance over the location of the alleged offense if a student is not the victim)
- Campus Dean of Student Services (of the student victim's "home campus" or with cognizance over the location of the alleged offense if a student is not the victim)
- Vice President for Workforce Solutions (for incidents involving a student in a Workforce Solutions class)
- Associate Vice President for Human Resources (for incidents involving an employee or contractor)
- Director of Safety & Security
- Director of Intercultural Learning

### **2.6. Reporting Incidents**

All members of the TCC community who believe they have been subjected to crime should immediately report the incident to campus security or local police.

All emergencies or any incident where someone is in imminent danger should be reported immediately to campus security or local police by dialing 911 or one of the following numbers:

- Chesapeake Campus (757) 327-9940
- Green District Building (757) 327-9924
- Norfolk Campus (757) 327-9924
- Portsmouth Campus (757) 592-7742
- Regional Automotive Center (757) 327-9899
- Virginia Beach Campus (757) 327-9900
- Visual Arts Center (757) 327-9907
- Workforce Solutions (757) 327-9942

Whether or not a report is made to law enforcement, members of the campus community should report alleged violations of this policy to the Title IX Coordinator during normal business hours. The Title IX Coordinator is solely responsible for overseeing the prompt, fair, and impartial investigation and resolution of complaints filed with the College. To help ensure a prompt, fair and impartial investigation and resolution, individuals are encouraged to complete a Complaint Form, found in Appendix A. The written complaint will be submitted to the Title IX Coordinator. Although strongly encouraged, a complainant is not required to submit a complaint on the Complaint Form or in writing.

#### **Tidewater Community College Title IX Campus Resources**

Title IX Coordinator:	Dr. Michael Summers Green District Building (757) 822-7122 <a href="mailto:msummers@tcc.edu">msummers@tcc.edu</a>
Deputy Title IX Coordinator:	Dr. James Edwards Pass Building (757) 822-5121 <a href="mailto:jedwards@tcc.edu">jedwards@tcc.edu</a>
Deputy Title IX Coordinator:	Mr. Emanuel Chestnut Andrews Building (757) 822-1421 <a href="mailto:echestnut@tcc.edu">echestnut@tcc.edu</a>
Deputy Title IX Coordinator:	Dr. Dana Singleton Building A (757) 822-2180

Deputy Title IX Coordinator:

[dsingleton@tcc.edu](mailto:dsingleton@tcc.edu)

Dr. Marilyn Hodge

Bayside Building

(757) 822-7245

[mhodge@tcc.edu](mailto:mhodge@tcc.edu)

After normal business hours, members of the campus community should report alleged violations of this policy to the Title IX Coordinator, Dr. Michael Summers, (757) 285-9363, [msummers@tcc.edu](mailto:msummers@tcc.edu).

There is no time limit for filing a complaint with the College. However, complainants should report possible violations of this policy as soon as possible to maximize the College's ability to respond effectively. Failure to report promptly could result in the loss of relevant evidence and impair the College's ability to adequately respond to the allegations.

## **2.7. Confidentiality and Anonymous Reports**

Individuals may be concerned about their privacy when they report a possible violation of this policy. TCC has a responsibility to end conduct that violates this policy, prevent its recurrence, and address its discriminatory effects. To that end, some college employees may not withhold any report of sexual violence, domestic violence, dating violence, or stalking. The college expects employees to treat information they learn concerning incidents of reported violations of this policy with respect and with as much privacy as possible. College employees must share such information only with those college and law enforcement officials who must be informed of the information pursuant to this policy.

Responsible employees shall report all alleged violations of this policy obtained in the course of his or her employment to the Title IX Coordinator as soon as practicable after addressing the immediate needs of the complainant. Other college employees have a duty to report sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes (i.e., Campus Security Authorities (CSAs) under the Clery Act). As delineated in [TCC Policy 1303](#) (Campus Security Authorities), CSAs include student/conduct affairs personnel, campus security, student activities staff, human resources staff, and advisors to student organizations. Reports received by the college concerning the abuse of a minor shall be reported in compliance with state law and as specified in [TCC Policy 3111](#) (Reporting Child Abuse or Neglect).

If the complainant requests that the complainant's identity not be released to anyone else, it is recommended that he or she reports the alleged conduct to someone with a duty to maintain confidentiality, e.g. mental health counselor or clergy. Employees also may contact the Employee Assistance Program. If the complainant requests that the complainant's identity is not released to anyone else, the college's ability to investigate and take reasonable action in response

to a complaint may be limited. In such cases, the college shall evaluate the request(s) that a complaint remain confidential in the context of the college's commitment to provide a reasonably safe and non-discriminatory environment. In order to make such an evaluation, the Title IX Coordinator shall conduct a preliminary investigation into the alleged violation of this policy and may weigh the request(s) against the following factors:

- the seriousness of the allegation(s);
- the complainant's or alleged victim's age;
- whether there have been other similar complaints against the same respondent;
- the respondent's right to receive information about the allegations if the information is maintained by the college as an "education record" under FERPA; and
- the applicability of any laws mandating disclosure.

The College may pursue an investigation even if the complainant requests that no action be taken and the college will not be able to ensure confidentiality in all cases. The Title IX Coordinator shall notify the complainant in writing when it is determined that the college will be unable to maintain confidentiality or respect the complainant's request for no further action.

Additionally, upon receiving a report of an alleged act of sexual violence against a student or one that allegedly occurred on property owned or controlled by the College or on public property within the campus, or immediately adjacent to and accessible from the campus, the Title IX Coordinator shall convene the College's review committee within 72 hours to review the information reported and any information obtained through law-enforcement records, criminal history record information, health records, conduct or personnel records, and any other facts and circumstances, including personally identifiable information, related to the alleged incident known to the review committee. The review committee may try to reach a consensus, but it is the law enforcement representative of the review committee that ultimately determines whether the disclosure of the information, including the personally identifiable information, is necessary to protect the health or safety of the alleged victim or other individuals. The College shall disclose such information to the law enforcement agency that would be responsible for investigating the alleged incident immediately. The Title IX Coordinator will notify the alleged victim in writing that such disclosure is being made.

If the report of an alleged act of sexual violence would constitute a felony sexual assault, within 24 hours of the first review team meeting, the law enforcement representative of the review committee shall notify the local Commonwealth's Attorney and disclose the information received by the review committee, including personally identifiable information, if such information was disclosed pursuant to the previous paragraph. The law enforcement representative usually

will make this disclosure; however, any member of the review committee may decide independently that such disclosure is required under state law and within 24 hours of the first review team meeting shall disclose the information to the local Commonwealth's Attorney, including personally identifiable information, if such information was disclosed pursuant to the previous paragraph. If the Title IX Coordinator is aware of such disclosure, the Title IX Coordinator will notify the alleged victim in writing that such disclosure is being made. In addition, law enforcement<sup>1</sup> will notify the local Commonwealth's Attorney within 48 hours of beginning an investigation involving a felony sexual assault.

The College will accept anonymous reports, but it will be limited in its ability to investigate and take reasonable action. The College must have sufficient information to conduct a meaningful and fair investigation. A respondent has a right to know the name of the complainant and information regarding the nature of the allegations in order to defend against the complaint.

The College, when reasonably available and when requested, may arrange for changes in academic, parking, transportation, or work arrangements after an alleged violation of this Policy. When such accommodations are provided, the College will protect the privacy of the complainant to the extent possible while still providing the accommodation.

## **2.8. Handling of Reports and Investigations**

The Title IX Coordinator will assist members of the campus community in reporting incidents to law enforcement authorities upon request. The Title IX Coordinator will request the consent of the complainant (or alleged victim if different from the complainant) to report incidents of alleged sexual violence that occur on campus property to law enforcement. Members of the campus community may decline to notify law enforcement authorities and decline their consent for the Title IX Coordinator to notify law enforcement if they wish. TCC shall comply with all requests for cooperation by the state police or local law enforcement in investigations. The College may be required to suspend the Title IX investigation while the state police or the local law enforcement agency gathers evidence. The College shall resume its Title IX investigation as soon as the state police or local law enforcement agency has given notice that they have completed gathering evidence. Otherwise, the College's investigation shall not be precluded or suspended on the grounds that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

## **2.9. Interim Measures**

Prior to the resolution of a complaint, the College may suspend or place on disciplinary or administrative leave the respondent when it is determined that the respondent's continued presence on campus threatens the safety of an individual or of the campus community generally; may hamper the investigation into the alleged misconduct; or is necessary to stop threatening or retaliatory contact

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<sup>1</sup> Either campus security, the local law enforcement agency, or the State Police will notify the Commonwealth's Attorney pursuant to an MAA/MOU

against the complainant or complainant's witnesses. TCC shall provide advance notice of such measures, except in cases where the individual's presence constitutes a threat. In all cases, however, the College shall notify individuals subject to these interim measure(s) in writing of the specific facts and circumstances that make such interim measure(s) necessary and reasonable. Individuals subject to proposed interim measures shall have the opportunity to show why such measure(s) should not be implemented.

Notwithstanding the above, TCC may impose a "no contact" order on each party, requiring the parties to refrain from having contact with one another, directly or through proxies, whether in person or by electronic means. The College also shall enforce orders of protection issued by courts on all college premises to the extent possible.

The College may implement other measures for either the complainant or the respondent if requested, appropriate, and reasonably available, whether a formal complaint has been filed or whether an investigation by either campus administrators or law enforcement agencies has commenced. Such measures may include, but are not limited to, course schedule adjustments, reassignment of duty, changing work arrangements, changing parking arrangements, rescheduling class work, assignments and examinations, and allowing alternative class or work arrangements, such as independent study or teleworking.

## **2.10. Written Notification of Rights and Options**

Members of the College community who report incidents of sexual assault, domestic violence, dating violence, or stalking, whether the incident occurred on or off campus, shall receive a written explanation of their rights and options, including (i) the available law-enforcement options for investigation and prosecution; (ii) the importance of collection and preservation of evidence; (iii) the available options for a protective order; (iv) the available campus options for investigation and adjudication under the college's policies; (v) the complainant's rights to participate or decline to participate in any investigation to the extent permitted under state or federal law; (vi) the applicable federal or state confidentiality provisions that govern information provided by a victim; (vii) information on contacting available on-campus resources and community resources, including the local sexual assault crisis centers, domestic violence crisis centers, or other victim support services with which the college has entered into a memorandum of understanding; (viii) the importance of seeking appropriate medical attention; and (ix) options related to changes in academic, parking, and working arrangements, when requested and when reasonably available.

## **2.11. Resolution of Complaints**

TCC shall provide prompt, fair, and impartial investigation and resolution of alleged violations of this policy and is committed to so doing. Title IX Coordinator(s), investigators, and hearing officials shall receive annual training

on sexual violence, domestic violence, dating violence, and stalking, and the conduct of investigations and hearings. Complaints may be resolved by either an informal or a formal resolution process.

The parties may agree to proceed under the informal resolution process in matters not involving sexual violence, domestic violence, dating violence, or stalking. The formal resolution process shall be applied (i) when any party that participated in the informal resolution process chooses to terminate the process, and (ii) to all matters that are not eligible for informal resolution.

## **2.12. Retaliation**

Any form of retaliation, including intimidation, threats, harassment, and other adverse action taken or threatened against any complainant or person reporting a complaint alleging a violation of this Policy, or any person cooperating in the investigation of allegations of violations of this Policy, to include testifying, assisting or participating in any manner in an investigation pursuant to this policy and the resolution procedures is strictly prohibited. Action is generally deemed adverse if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this Policy. Retaliation may result in disciplinary or other action independent of the sanctions or interim measures imposed in response to the underlying allegations of violations of this Policy.

## **2.13. Amnesty**

TCC encourages the reporting of incidents that violate this policy. The use of alcohol or drugs shall not be a deterrent to reporting an incident. When conducting the investigation, the College's primary focus shall be on addressing the alleged misconduct and not on alcohol and drug violations that may be discovered or disclosed. The College does not condone underage drinking; however, the College shall extend limited amnesty from punitive sanctioning in the case of drug or alcohol use to complainants, witnesses, and others who report incidents, provided that they are acting in good faith in such capacity. TCC may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

## **2.14. Sanctions & Corrective Actions**

The College shall take reasonable steps to prevent the recurrence of any violations of this policy and to correct the discriminatory effects on the complainant (and others, if appropriate). Sanctions for a finding of responsibility shall depend upon the nature and gravity of the misconduct, any record of prior discipline for similar violations, or both.

The range of potential sanctions and corrective actions that may be imposed against a student includes, but is not limited to: required discrimination or harassment education; requirement not to repeat or continue the discriminatory, harassing, or retaliatory conduct; verbal or written warning; a no-contact order; written or verbal apology; verbal or written warning; and probation, suspension, or dismissal from the college.

If a student is found responsible for an act of sexual violence under this policy and is suspended or dismissed, the student's academic transcript shall be noted as follows: *"Suspended/Dismissed for a violation of Tidewater Community College's sexual misconduct policy."* In the case of a suspension, the College shall remove such notation immediately following the completion of the term of suspension and any conditions thereof, and when the student is considered to be in good standing. The student shall be considered to be in good standing for the purposes of this section following the completion of the term of suspension and satisfaction of all conditions thereof. Upon completion of the suspension, the Title IX Coordinator (or designee) shall meet with the student to confirm completion of the conditions and upon such confirmation, direct the College Registrar to remove the notation from the student's academic transcript.

If a student withdraws from the college while under investigation involving an act of sexual violence under this policy, the student's academic transcript shall be noted as follows: *"Withdrew while under investigation for a violation of Tidewater Community College's sexual misconduct policy."* Students are strongly encouraged not to withdraw from the College.

The College shall immediately remove the notation from the student's academic transcript upon a subsequent finding that the student is not responsible for an offense of sexual violence under this policy. Upon such a finding, the Title IX Coordinator (or designee) shall direct the College Registrar to remove the notation from the student's academic transcript.

Notations on academic transcripts regarding suspensions and dismissals shall be placed on the student's academic transcript after resolution of all appeals.

Sanctions for faculty or classified employees shall be determined in accordance with the [VCCS Policy Manual Section 3.12](#) (Faculty Sanctions) or the Department of Human Resource Management [Policy 1.60](#) (Standards of Conduct), respectively. Possible sanctions and corrective actions include: required discrimination or harassment education; informal or formal counseling; reassignment; demotion; suspension; non-reappointment; and termination from employment.

Third parties, e.g., contractors, found responsible for violating this policy shall be prohibited from having access to the College. Depending on the violation, this prohibition may be permanent or temporary.

The Title IX Coordinator shall determine the final accommodations to be provided to the complainant, if any.

Typically, sanctions shall not take effect until resolution of any timely appeal. However, sanctions may take effect immediately when the continued presence of an individual on campus may threaten the safety of an individual or the college community, generally. In such cases, sanctions will continue in effect until such time as the appeal process is exhausted.

## 2.15. Appeals

Either the complainant or the respondent shall be afforded the opportunity to appeal the outcome of the formal complaint resolution process and/or the recommended sanction(s). Appeals shall be conducted in accordance with the applicable grievance procedures described in the Student Handbook, [VCCS Policy Manual](#), and the [DHRM Grievance Procedure Manual](#) based on the status of the person filing the appeal. Third parties may request that the college reconsider its decision in writing to the Executive Staff member responsible for the area.

## 2.16. Timely Warnings

TCC is required by federal law to issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the College community. The College shall ensure, to every extent possible, that an alleged victim's name and other identifying information is not disclosed, while still providing enough information for members of the college community to make decisions to address their own safety in light of the potential danger.

## 2.17. Support Services

All students and employees shall receive information in writing of available counseling, health, mental health, victim advocacy, legal assistance, and other services available in the community and on campus. For more information about available resources, go to: <http://www.tcc.edu/student-services/personal-support/counseling-services>.

## 2.18. Education and Awareness

The College shall provide a program to educate students and employees about this policy and its procedures. The education and awareness program shall be designed to promote awareness of sexual violence, domestic violence, dating violence, and stalking. Incoming students and new employees shall participate in a mandatory primary prevention and awareness program.

The program, at a minimum, shall include:

- A statement that the College prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;
- The definition of domestic violence, dating violence, sexual assault, and stalking;
- The definition of consent;
- Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;

- Information on possible sanctions, procedures to follow after an incident of sexual violence, domestic violence, dating violence or stalking, disciplinary procedures, and the protection of confidentiality; and
- Written notification about available resources and services, and options for academic and work accommodations, if requested and reasonably available.

The College also conducts an ongoing prevention and awareness campaign for all students and employees. The campaign shall include, at a minimum, the information provided to incoming students and new employees.

### **2.19. Academic Freedom and Free Speech**

This policy does not allow censorship of constitutionally protected expression. As a “marketplace of ideas,” the college encourages intellectual inquiry and recognizes that such inquiry may result in intellectual disagreements. Verbal or written communications, without accompanying unwanted sexual physical contact, shall not be considered sexual violence or sexual assault. Verbal or written communications shall constitute sexual harassment only when such communications are sufficiently severe, pervasive, and objectively offensive that they undermine and detract from an employee’s work performance or a student’s educational experience.

In addressing all complaints and reports of alleged violations of this policy, TCC shall take all permissible actions to ensure the safety of students and employees while complying with any and all applicable guidance regarding free speech rights of students and employees. This policy does not apply to curriculum, curricular materials, or abridge the use of particular textbooks.

### **2.20. False Allegations**

Any individual who knowingly files a false complaint under this policy, who knowingly provides false information to college officials, or who intentionally misleads college officials who are involved in the investigation or resolution of a complaint shall be subject to disciplinary action, up to and including dismissal for students and termination of employment for faculty and staff. An allegation that cannot be proven by a preponderance of the evidence is not necessarily proof of knowingly filing a false complaint.

### **2.21. Consensual and Familial Relationships**

Pursuant to VCCS Policy 3.14.2, consenting romantic or sexual relationships between employees and students for whom the employee has a direct professional responsibility are prohibited. Consenting romantic or sexual relationships between employees where one employee has a direct professional responsibility also are prohibited. Consenting romantic or sexual relationships between other employees (not in a supervisory position), or with students for whom the employee does not have a direct professional responsibility, although not expressly forbidden, are unwise and are strongly discouraged. The relationship may be viewed in different ways by each of the parties, particularly

in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome.

### **2.22. Record Keeping**

The Title IX Coordinator shall maintain, in a confidential manner, for at least seven (7) years, paper or electronic files of all complaints, witness statements, documentary evidence, written investigative reports, review committee records, written corrective action reports, sanctions, appeal hearings and associated documents, the responses taken by college personnel for each complaint, including any interim and permanent steps taken with respect to the complainant and the respondent, and a narrative of all action taken to prevent recurrence of any harassing incident(s), including any written documentation.

## **3. Responsibilities**

The Interim Vice President for Student Affairs shall develop and maintain procedures that are consistent with this policy.

The Interim Vice President for Student Affairs shall serve as the college's Title IX Coordinator. As such, the Vice President shall be responsible for overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. Campus provosts, deans of student services, and employee supervisors, in performing the responsibilities delineated in the following procedures, shall act in the capacity of deputies to the college's Title IX Coordinator.

All campus provosts, campus deans of student services, and supervisors shall ensure that employees and students are in full compliance with this policy and associated legal guidelines. Upon receiving a complaint of sexual misconduct, provosts, campus deans of student services, and supervisors shall immediately contact the college's Title IX Coordinator to ensure a prompt, fair investigation of the complaint. All complaints must be thoroughly investigated. The college's Title IX Coordinator shall provide guidance and assistance in the proper handling of any allegations.

## **4. Procedures**

The following procedures shall be used by members of the college community to address complaints alleging sexual misconduct. The following procedures have been developed for student/student, student/employee, and employee/student complaints.

In all instances, reasonable efforts shall be made to reach a fair and equitable resolution in a timely manner. Both the complainant and the respondent will be promptly notified of the outcome and afforded an opportunity to appeal.

The complainant and the respondent have a right to not have their unrelated past sexual history discussed as part of these procedures.

The rights of the respondent include a right to an explanation of the charges; the right to testify on his/her own behalf; the right to call witnesses to testify on his/her own behalf; the right to be informed in a timely manner of the findings and outcome of the

proceedings; and the right to appeal. TCC will safeguard the identity of the complainant outside the confidential proceedings of the college's established process, unless consent is secured from the complainant to reveal his/her identity.

These procedures are not intended to impair or limit the right of anyone to seek resolution under state or federal law. Initiating college action against the respondent does not preclude the complainant from initiating civil or criminal action against the respondent. Initiating civil action does not preclude the complainant from taking college or criminal action nor does initiating criminal action preclude the complainant from taking college or civil action.

Sexual violence and sexual assault are criminal activities. If there is a concurrent investigation, TCC will not wait for the conclusion of the criminal investigation to begin the college's investigation process. TCC will take immediate steps to protect the complainant within the educational setting. TCC may delay temporarily the fact-finding portion of the investigation while law enforcement is gathering evidence. Once notified that law enforcement evidence gathering is complete, TCC will promptly resume its fact finding for the Title IX investigation.

Once a TCC official is aware of possible sexual harassment or sexual misconduct, immediate and appropriate action must be taken to investigate what has occurred, take reasonable steps to end any harassment, eliminate a hostile environment if one has been created, and take reasonable steps to prevent a recurrence of the harassment. These steps are the responsibility of TCC, whether or not a complaint is filed. To that end, any college employee becoming aware of a violation of this policy shall report such knowledge promptly to TCC's Title IX Coordinator who shall notify other college officials as appropriate. If the alleged policy violation involves criminal activity, the Title IX Coordinator shall notify the Director of Safety and Security who shall insure that the appropriate law enforcement agency is notified. See section 4.2 for reporting of alleged acts of sexual violence.

#### **4.1. Sexual and Domestic Violence Procedures**

An individual who has experienced sexual violence, domestic violence, dating violence, or stalking should do the following, as applicable:

- Safely find a place away from harm.
- Call 911 or, if on campus, contact campus security.
- Call a friend, a campus advocate, a family member, or some other trusted person and ask him/her to stay with the victim.
- Go to the nearest medical facility/emergency room. It is important to seek appropriate medical attention to ensure your health and well-being, as well as to preserve any physical evidence.
- If the use of a drug is suspected, the hospital or clinic where the victim receives medical care should be asked to take a urine sample and preserve it as evidence. "Rape drugs," such as Rohypnol and GHB, are more likely to be detected in urine than in blood.

- For professional and confidential counseling support, the Virginia Family Violence & Sexual Assault Hotline should be called at 1-800-838-8238. Help is available 24 hours a day.
- The victim should take steps to preserve any physical evidence because it will be necessary to prove criminal domestic violence, dating violence, sexual assault, or stalking, or to obtain a protective order. Until evidence is gathered by medical or law enforcement authorities, the victim should:
  - not wash his/her hands, bathe, douche, or urinate, if possible.
  - not eat, blow his/her nose, drink liquids, smoke, or brush his/her teeth if oral contact took place.
  - keep the clothing worn when the incident occurred; if clothing is changed, the clothing worn during the incident should be placed in a paper bag.
  - not destroy any physical evidence that may be found in the vicinity of the incident by cleaning or straightening the location of the crime until law enforcement officials have had an opportunity to collect evidence.
  - tell someone all the details you remember or write them down as soon as possible.
  - maintain text messages, pictures, online postings, video, and other documentary or electronic evidence that may corroborate a complaint.

#### 4.2. Reporting Incidents

Members of the College community who believe they have been subjected to a sexual crime should immediately report the incident to campus security or local police. All emergencies or any incident where someone is in imminent danger should be reported immediately to local police by dialing 911 and then to campus security at the posted number for the location.

Whether or not a report is made to law enforcement authorities, members of the College community should report alleged violations of this policy to the Title IX Coordinator or a Deputy during normal business hours. To help ensure a prompt, fair, and impartial investigation and resolution, individuals are encouraged to complete a Complaint Form ([Appendix A](#)) and submit the written complaint to the Title IX Coordinator or a Deputy. Although strongly encouraged, a complainant is not required to submit a written complaint or to use the Complaint Form if submitting a written complaint. After normal business hours, members of the college community should report alleged violations of this policy to campus security. A Deputy Title IX Coordinator receiving a report of an alleged violation of this policy shall promptly forward the report to the Title IX Coordinator. Contact information for reporting such violations is provided in [Appendix B](#).

There is no time limit for filing a complaint with the College. However, complainants should report possible violations of this policy as soon as possible to maximize the college's ability to respond effectively. Failure to report promptly could result in the loss of relevant evidence and impair the college's ability to adequately respond to the allegations.

If a complainant wishes to keep the report confidential, it is recommended that he or she reports the alleged conduct to someone with a duty to maintain confidentiality, e.g., mental health counselor or clergy. Employees may contact the Employee Assistance Program.

Upon receiving a report of an alleged act of sexual violence against a student or one that allegedly occurred on property owned or controlled by the College or on public property within the campus, or immediately adjacent to and accessible from the campus, the Title IX Coordinator shall convene the college's Sexual Violence Incident Review Committee within 72 hours to review the information reported and any information obtained through law-enforcement records, criminal history record information, health records, conduct or personnel records, and any other facts and circumstances, including personally identifiable information, related to the alleged incident known to the review committee. If it is determined by the law enforcement representative of the review committee that the disclosure of the information, including the personally identifiable information, is necessary to protect the health or safety of the alleged victim or other individuals, the college immediately will disclose such information to the law enforcement agency that would be responsible for investigating the alleged incident. The Title IX Coordinator will notify the alleged victim in writing that such disclosure is being made.

If the report of an alleged act of sexual violence would constitute a felony sexual assault, within 24 hours of the first review team meeting, the law enforcement representative of the review committee shall notify the local Commonwealth's Attorney and disclose the information received by the review committee, including personally identifiable information, if such information was disclosed pursuant to the paragraph immediately above. The law enforcement representative usually will make this disclosure; however, any member of the review committee may decide independently that such disclosure is required under state law and within 24 hours of the first review team meeting shall disclose the information to the local Commonwealth's Attorney, including personally identifiable information, if such information was disclosed pursuant to the paragraph immediately above. If the Title IX Coordinator is aware of such disclosure, the Title IX Coordinator will notify the alleged victim in writing that such disclosure is being made.

#### **4.3. Formal Resolution Process**

The formal resolution process will be applied (i) when any party to the complaint requests a formal resolution and (ii) to all matters that are not eligible for informal resolution, e.g., sexual violence, domestic violence, dating violence, and stalking.

#### **4.3.1. Complainant's Initial Meeting with the Title IX Coordinator<sup>2</sup>**

As soon as is practicable, the Title IX Coordinator will contact the complainant to schedule an initial meeting. If the person reporting the incident is not the alleged victim, the Title IX Coordinator also will contact the alleged victim as soon as possible to schedule an initial meeting. The Title IX Coordinator shall inform the complainant that he or she may be accompanied by an advisor of his or her choosing at the meeting.

At this initial meeting, the Title IX Coordinator will:

- a) provide the complainant a copy of this policy;
- b) provide the complainant with a Complaint Form (Appendix A), if necessary;
- c) provide a written explanation of the complainant's rights and options related to changes in academic, parking, and working arrangements;
- d) explain avenues for formal resolution and informal resolution of the complaint;
- e) explain the steps involved in an investigation;
- f) discuss confidentiality standards and concerns with the complainant;
- g) determine whether the complainant wishes to pursue a resolution (formal or informal) through the college or no resolution of any kind;
- h) refer the complainant to college and community resources, including the local sexual assault crisis center, domestic violence crisis center, or other victim support service with which the college has entered into a memorandum of understanding;
- i) discuss with the complainant, as appropriate, possible interim measures that may be taken or provided when necessary during the pendency of the investigative and resolution processes;
- j) discuss the right to a prompt, fair and impartial resolution of the complaint; and
- k) discuss the College's obligation to disclose information about the complaint, including personally identifiable information, to campus/local law enforcement or to the local Commonwealth's Attorney, or both, under certain conditions.

#### **4.3.2. Respondent's Initial Meeting with the Assigned Title IX Coordinator<sup>3</sup>**

As soon as is practicable, the Title IX Coordinator will schedule an initial meeting with the respondent. The Title IX Coordinator shall inform the respondent that he or she may be accompanied by an advisor of his/her

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<sup>2</sup> TCC may request a meeting with a third party complainant, but it may not be able to require his or her attendance.

<sup>3</sup> TCC may request a meeting with a third-party respondent, but it may not be able to require his or her attendance.

choosing at that meeting. During the initial meeting with the respondent, the Title IX Coordinator will:

- a) provide the respondent, in writing, sufficient information to allow him/her to respond to the substance of the allegation;
- b) provide the respondent a copy of this policy;
- c) provide a written explanation of the respondent's rights and options related to changes in academic, parking, and working arrangements;
- d) explain the college's procedures for formal resolution and informal resolution of the complaint;
- e) explain the steps involved in an investigation;
- f) discuss confidentiality standards and concerns with the respondent;
- g) discuss non-retaliation requirements;
- h) inform the respondent of any interim measures that may be imposed on the respondent;
- i) refer the respondent to college and community resources, as appropriate;
- j) discuss with the respondent, as appropriate, possible interim measures that can be provided to the respondent during the pendency of the investigative and resolution processes;
- k) discuss the respondent's right to due process and a prompt, fair and impartial resolution of the complaint; and
- l) if the respondent is a student and the complaint involves an alleged act of sexual violence, explain to the respondent that the college will include a notation on the academic transcript if the respondent is suspended or dismissed after being found responsible, or if the respondent withdraws while under investigation, that the investigation may continue in the respondent's absence, if possible while being afforded notice of the charges (and hearing, if applicable) and an opportunity to respond to all the evidence.

#### **4.3.3. Title IX Coordinator's Initial Determination**

The College shall conduct an investigation of the complaint unless (i) the complainant does not want the college to pursue the complaint and the Title IX Coordinator has determined that the college can honor the request; or (ii) it is clear on its face and based on the Title IX Coordinator's initial meetings with the parties that no reasonable grounds exist for believing that the conduct at issue constitutes a violation of this policy. The Title IX Coordinator will consider the following factors in determining whether it is reasonable to investigate the complaint: the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source

of the information; and whether the individuals allegedly subjected to the conduct can be identified.

In the event that the Title IX Coordinator determines that an investigation of the complaint should not be conducted, he or she will document (in consultation, as necessary, with the complainant, respondent, and other college officials) the appropriate resolution of the complaint and inform the parties of the same. The Title IX Coordinator shall provide specific and clear written reason(s) why an investigation should not be conducted. The Title IX Coordinator shall provide the determination that the college will not investigate the matter to the complainant and the respondent, concurrently, within five (5) workdays of the completion of the initial meetings. This decision is final.

#### **4.3.4. Appointment of the Investigator and Conduct of the Investigation**

If the Title IX Coordinator determines that an investigation should be conducted, he/she will appoint an investigator within five (5) workdays of the completion of the initial meetings. The Title IX Coordinator will share the investigator's name and contact information with the complainant and respondent and will forward the complaint to the investigator. Within three (3) workdays of such appointment, the complainant or the respondent may identify to the Title IX Coordinator in writing any potential conflict of interest posed by assigning such investigator to the matter. If the assigned investigator believes the appointment poses a conflict of interest, he/she shall inform the Title IX Coordinator within three (3) workdays of receiving the appointment. The Title IX Coordinator will consider such statements and will assign a different individual as investigator if it is determined that a material conflict of interest exists.

The investigator will contact the complainant and respondent promptly. In most cases, this should occur within three (3) workdays from the date of the investigator's appointment or the conclusion of the informal resolution process, whichever is later. The investigator will schedule meetings with the parties. The parties may provide supporting documents, evidence, and recommendations of witnesses to be interviewed during the course of the investigation. Each party may have one advisor present during any meeting with the investigator; however, the advisor may not speak on the party's behalf.

In the conduct of the investigation, the investigator should weigh the credibility and demeanor of the complainant, respondent, and witnesses; the logic and consistency of the evidence, motives, and any corroborating evidence.

The investigation of any alleged violation of this policy should be completed within 60 days of the filing of the complaint or the date on which the college becomes aware of the alleged violation, unless good cause exists to extend the timeframe. If more time is necessary, the Title

IX Coordinator will notify the parties in writing and give the reason for the delay and an estimated time of completion.

The investigator will complete a written investigative report that includes summaries of all interviews conducted, photographs, descriptions of relevant evidence, the rationale for credibility determinations, summaries of relevant electronic records, and a detailed report of the events in question. The written investigative report shall include, at minimum, the following information:

- the name and gender of the complainant and, if different, the name and gender of the person reporting the allegation;
- a statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s);
- the date that the complaint or other report was made;
- the date the respondent was interviewed;
- the names and gender of all persons alleged to have committed the alleged violation;
- the names and gender of all known witnesses to the alleged incident(s);
- the dates that any relevant documentary evidence (including cell phone and other records as appropriate) was obtained;
- any written statements of the complainant or the alleged victim if different from the complainant; and
- the date on which the college deferred its investigation and disciplinary process because the complainant filed a law enforcement complaint and the date on which the college resumed its investigation and disciplinary process (if applicable).

Both complainant and respondent will have the opportunity to review and respond to evidence obtained during the investigation. Each party also will have the opportunity to review and comment on the written investigative report within seven (7) workdays of receiving the report. The final written investigative report and the parties' responses thereto shall be part of the record.

The investigator will forward the written investigative report to the Title IX Coordinator.

The withdrawal of a student from the college while under investigation for an alleged violation of this policy involving an act of sexual violence in most cases, should not end the College's investigation and resolution of the complaint. The College shall continue the investigation if possible as set forth under this policy. The College shall notify the student in writing of the investigation and afford the student the opportunity to provide

evidence, to review and respond to all the evidence against the student, and to the written investigative report prior to making a final determination. The student also shall receive notice in writing of any hearing, including the day, time, and location.

Upon the student's withdrawal, the College Registrar shall place a notation on the student's academic transcript that states, "*Withdrew while under investigation for a violation of Tidewater Community College's sexual misconduct policy.*" After the College has completed its investigation and resolution of the complaint, the Title IX Coordinator shall immediately notify the College Registrar who will either (1) remove the notation if the student is found not responsible or (2) change the notation to reflect either a suspension or dismissal for a violation of the policy if either was imposed. The College shall end the investigation and resolution of the complaint if the College cannot locate the respondent and provide him or her notice and the opportunity to respond. In such cases, the College shall maintain the withdrawal notation on the student's academic transcript. Upon a final determination, the Title IX Coordinator immediately shall notify the College Registrar and direct that the appropriate notation is made.

#### **4.3.5. Determination of Title IX Coordinator and Corrective Action Report**

The Title IX Coordinator will determine whether there is a preponderance of the evidence to find that the respondent violated this policy as alleged. In most cases, this should occur within five (5) workdays of receiving the written investigative report from the investigator. The "preponderance of the evidence" standard requires that the weight of the evidence, in totality, supports a finding that it is more likely than not that the alleged violation occurred.

If the Title IX Coordinator finds that the evidence does not prove by a preponderance of the evidence that the respondent committed the alleged violation, the matter will be closed. The Title IX Coordinator will make the determination in writing and distribute the written investigative report with such finding to the complainant and the respondent concurrently. All parties to whom the written investigative report is distributed pursuant to this policy should maintain it in confidence. Both the complainant and the respondent may appeal the finding under the procedure described below.

If the Title IX Coordinator finds by a preponderance of the evidence that a violation of this policy did occur, the Title IX Coordinator will make the determination in writing and distribute the written investigative report with such finding to the complainant and the respondent concurrently. All parties to whom the written investigative report is distributed pursuant to this policy should maintain it in confidence. Both the complainant and the respondent may appeal the finding under the procedure described below.

When the Title IX Coordinator finds that a violation has occurred, he or she also shall write a separate written corrective action report that will contain recommendations for steps that should be taken to prevent recurrence of any such violation and to remedy any discriminatory effects. If interim measures as described above have been taken, the written corrective action report shall include a recommendation regarding continuation, suspension, or modification of any such interim measures. The Title IX Coordinator shall distribute the written corrective action report to the complainant and respondent concurrently. In most cases, the written corrective action report should be completed within five (5) workdays after the distribution of the written investigative report. The written investigative report and the corrective action report may be submitted concurrently. The Title IX Coordinator also shall provide the written investigative report and the written corrective action report to the appropriate college official, as described below.

If the respondent is a student, the Title IX Coordinator will forward the reports to the respective Campus Dean of Student Services. Within ten (10) workdays, the Campus Dean of Student Services shall determine and impose appropriate sanctions, as described below. The respondent and the Title IX Coordinator shall receive written notification of sanction(s). When the respondent is a student, within five (5) workdays of receipt, the Title IX Coordinator may disclose to the complainant the sanctions imposed on the respondent that directly relate to the complainant as permitted by state and federal law, including the Federal Educational Rights and Privacy Act (FERPA) and the Virginia Freedom of Information Act, when such disclosure is necessary to ensure the safety of the complainant. The Title IX Coordinator also may disclose in writing to the complainant the final results of a disciplinary proceeding involving the respondent with regard to an alleged forcible or non-forcible sex offense, act of stalking, domestic violence or dating violence on the complainant, as permitted by state and federal law including FERPA and the Virginia Freedom of Information Act. The disclosure of final results must include only the name of the student, the violation committed, and any sanction imposed by the college against the student.

If the respondent is an employee, the Title IX Coordinator will forward the reports to the employee's supervisor and the Associate Vice President of Human Resources. Within ten (10) workdays, in consultation with the Associate Vice President of Human Resources, the employee's supervisor shall determine and impose appropriate sanctions, as described below. The respondent and the Title IX Coordinator shall receive written notification of sanction(s).<sup>4</sup>

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<sup>4</sup> The complainant shall not receive information that would constitute personnel records; however, the college will take appropriate steps as necessary to protect the safety of the complainant while also complying with state law and policy.

If the respondent is a third party, the Title IX Coordinator will forward the reports to the Executive Staff member responsible for the third party contractor. Within ten (10) workdays, the Executive Staff member shall determine and impose appropriate sanctions, as described below. The respondent and the Title IX Coordinator shall receive written notification of sanction(s). The Title IX Coordinator may disclose to the complainant information as described above.

#### **4.3.6 Appeal**

The Title IX Coordinator will advise the complainant and the respondent of their right to appeal any finding or sanction in writing. The written notification also shall provide information on the appeals process based on the appellant's student, employee, or third party status. If the complainant or respondent does not contest the finding or recommended sanction(s), he or she shall sign a statement acknowledging such. The signed statement shall be part of the record.

Either party to a complaint may identify to the Title IX Coordinator in writing within three (3) workdays of being notified of the finding(s) or sanction of any potential conflict of interest posed by the college official to whom the appeal would be submitted. The college official shall notify the Title IX Coordinator within three (3) workdays of receiving an appeal if he/she believes considering the appeal would pose a conflict of interest. The Title IX Coordinator shall consider such statements and assign a different individual to consider the appeal if it is determined that a material conflict of interest exists.

#### **4.4. Informal Resolution Process**

After receiving a request from both parties to resolve the complaint with the informal resolution process, the Title IX Coordinator will appoint a college official to facilitate an effective and appropriate resolution. Within three (3) workdays of such appointment, the complainant or the respondent may identify to the Title IX Coordinator in writing of any potential conflict of interest posed by assigning such official to the matter. If the assigned investigator believes the appointment poses a conflict of interest, he/she shall inform the Title IX Coordinator within three (3) workdays of receiving the appointment. The Title IX Coordinator will consider such statements and will assign a different individual to facilitate if it is determined that a material conflict of interest exists. Within five (5) workdays of the appointment, the college official will request a written statement from the parties to be submitted within ten (10) workdays. Each party may request that witnesses are interviewed. Within ten (10) workdays of receiving the written statements, the college official will hold a meeting(s) with the parties and coordinate informal resolution measures. The college official shall document the meeting(s) in writing. Each party may have one advisor of his or her choosing during any meeting; however, the advisor may not speak on the party's behalf.

The informal resolution process should be complete within thirty (30) days in most cases, unless good cause exists to extend the timeframe. The parties will be notified in writing and given the reason for the delay and an estimated time of completion. Any party may request in writing that the informal resolution process be terminated at any time, in which case the formal resolution process will commence. In addition, any party can pursue formal resolution if he or she is dissatisfied with the proposed informal resolution.

Any resolution of a complaint through the informal process must address the concerns of the complainant and the responsibility of the college to address alleged violations of the policy, while also respecting the due process rights of the respondent. Informal resolution remedies might include mandatory education, counseling, written counseling by an employee's supervisor, or other methods. The College official will provide the complainant and respondent with a copy of the final written report concurrently. The final written report shall include the nature of the complaint, a meeting(s) summary, the informal resolution remedies applied, and whether the complaint was resolved through the informal resolution process.

There is no right of appeal afforded to the complainant or the respondent following the informal resolution process.

#### **4.5. Education & Awareness and Support Services**

The Title IX Coordinator shall chair and work in collaboration with the Sexual Misconduct Prevention Education & Healthy Relationships Committee to oversee the development and implementation of TCC's education and awareness program to promote awareness of this policy and of sexual violence, domestic violence, dating violence, and stalking. At a minimum, the primary prevention and education program shall include:

- a statement that the college prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;
- the definition of domestic violence, dating violence, sexual assault, and stalking;
- the definition of consent;
- safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
- information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;
- information on possible sanctions, procedures to follow after an incident of sexual violence, domestic violence, dating violence, or stalking, disciplinary procedures, and the protection of confidentiality; and

- written notification about available resources and services, and options for academic and work accommodations, if requested and reasonably available.

Incoming students and new employees must participate in the primary prevention and awareness program. The college shall also provide an ongoing prevention and awareness campaign for all students and employees. The campaign shall include, at a minimum, the information provided to incoming students and new employees.

The Title IX Coordinator shall assure that all students and employees receive information in writing regarding the availability of counseling, health care, mental health care, victim advocacy, legal assistance, and other services available in the community as well as through the college. Information about available resources shall be provided on the college's website at <http://web.tcc.edu/student-handbook/safety-and-security.php>.

## 5. Definitions

**Advisor:** An individual who provides the complainant and respondent support, guidance, or advice. Advisors may be present at any meeting or hearing, but may not speak directly on behalf of the complainant or respondent.

**Campus:** Refers to (i) any building or property owned or controlled by the college within the same reasonably contiguous geographic area of the college and used in direct support of, or in a manner related to, the college's educational purposes, and (ii) any building or property that is within or reasonably contiguous to the area described in clause (i) that is owned by the college but controlled by another person, is frequently used by students, and supports institutional purposes, such as a food or other retail vendor.

**Complainant:** Refers to an individual who may have been the subject of a violation of this policy and files a complaint against a faculty member, staff member, or student, or third party.

**Consent:** Any sexual activity or sex act committed against one's will, by the use of force, threat, intimidation, or ruse, or through one's mental incapacity or physical helplessness is without consent. Consent is knowing, voluntary, and clear permission by word or action, to engage in mutually-agreed upon sexual activity. Silence does not necessarily constitute consent. Past consent to sexual activities, or a current or previous dating relationship, does not imply ongoing or future consent. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). An individual cannot consent who is under the age of legal consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred.

*Mental incapacity* means that condition of a person existing at the time which prevents the person from understanding the nature or consequences of the sexual act involved (the who, what, when, where, why, and how) and about which the

accused knew or should have known. This includes incapacitation through the use of drugs or alcohol. Intoxication is not the same as incapacitation.

*Physical helplessness* means unconsciousness or any other condition existing at the time which otherwise rendered the person physically unable to communicate an unwillingness to act and about which the accused knew or should have known. Physical helplessness may be reached through the use of alcohol or drugs.

**Dating Violence:** Violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury committed by a person who is or has been in a close relationship of a romantic or intimate nature with the other person. 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.

**Domestic Violence:** Violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member, which includes a current or former spouse a person with whom the victim shares a child in common, or who is cohabitating with or has cohabitated with the person as a spouse or intimate partner.

**Respondent:** Refers to the individual who has been accused of violating this policy.

**Responsible Employee:** A responsible employee is one designated for purposes of initiating notice and investigation of alleged violations of this Policy or who has the authority to take action to redress violations of this Policy. A responsible employee also is any employee who a person reasonably believes is a responsible employee. [Any employee with supervisory authority is a responsible employee. Alternatively, the College may name responsible employees by title, or name employees who are CSAs as responsible employees.] A responsible employee shall not be an employee who, in his/her position at the college, provides services to the campus community as a licensed health care professional, (or the administrative staff of a licensed health care professional), professional counselor, victim support personnel, clergy, or attorney.

**Review Committee:** Review committee refers to the committee consisting of three or more persons, including the Title IX Coordinator or his/her designee, a representative of campus police or campus security, and a student affairs representative, that is responsible for reviewing information related to acts of sexual violence.

**Sex Discrimination:** Unlawful treatment of another based on the individual's sex that excludes an individual from participation in, separates, denies the individual the benefits of, or otherwise adversely affects a term or condition of an individual's employment, education, or participation in college program or activity.

**Sexual Assault:** The intentional physical sexual contact with a person against that person's will by the use of force, threat, or intimidation, or through the use of a person's mental incapacity or physical helplessness. Sexual assault includes intentionally touching, either directly or through clothing, of the victim's genitals, breasts, thighs, or

buttocks without the person's consent, as well as forcing someone to touch or fondle another against his or her will. Sexual battery is a type of sexual assault.

**Sexual Exploitation:** Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to invasion of sexual privacy; prostituting another person; non-consensual video or audio-taping of sexual activity; going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex); engaging in voyeurism; exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals, and knowingly transmitting HIV or an STD to another.

**Sexual Harassment:** Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment shall be considered to have occurred in the following instances:

*Quid Pro Quo:* The submission to or rejection of such conduct is used as the basis for educational or employment decisions affecting the student or employee either explicitly or implicitly; or

*Hostile Environment:* Conduct so severe, pervasive, and objectively offensive that it undermines and detracts from an employee's work performance or a student's educational experience.

**Sexual Misconduct:** Encompasses a range of behavior used to obtain sexual gratification against another's will or at the expense of another. Sexual misconduct includes rape, sexual harassment, sexual assault, sexual exploitation, and sexual violence.

**Sexual Violence:** Any intentional physical sexual abuse committed against a person's will or where a person is incapable of giving consent. Sexual violence includes rape, sexual assault, and sexual battery.

**Stalking:** Occurs when someone, on more than one occasion, engages in conduct directed at another person with the intent to place, or knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member.

**Third Party:** A third party is any person who is not a student or employee of the college.

## 6. References

[DHRM Grievance Procedure Manual](#)

[DHRM Policy 1.60](#) (Standards of Conduct)

[Family Educational Rights and Privacy Act \(FERPA\) \(20 U.S.C. § 1232g; 34 CFR Part 99\)](#)

[Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act \(20 USC § 1092\(f\)\)](#)

[Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as Amended by the Violence against Women Reauthorization Act of 2013 \(20 USC § 1092\(f\)\)](#)

[Office of Management and Budget's Final Bulletin for Agency Good Practices, 72 Fed. Reg. 3432 \(Jan. 25, 2007\)](#)

[TCC Policy 1200](#) (Equal Opportunity and Nondiscrimination)

[TCC Policy 1301](#) (Prevention of Campus and Workplace Violence)

[TCC Policy 1303](#) (Campus Security Authorities)

[TCC Policy 3106](#) (Reference and Background Checks)

[TCC Policy 3111](#) (Reporting Child Abuse or Neglect)

[Title IX of the Civil Rights Act of 1964 \(20 U.S.C. §1681\)](#)

[U.S. Department of Education OCR Revised Sexual Harassment Guidance \(January 2011\)](#)

[VCCS Policy Manual Section 3](#) (Conflict in Interest in Employment, Faculty Sanctions, and Consensual & Familial Relations)

[VCCS Policy Manual Section 6.5.5](#) (Sex Discrimination and Sexual Misconduct Policy)

[Violence Against Women Reauthorization Act of 2013](#)

[Virginia Governor's Executive Order 1 \(2014\)](#)

## **7. Review Periodicity and Responsibility**

The Interim Vice President for Student Affairs shall review this policy at the anniversary of its approval and, if necessary, recommend revisions.

This Policy shall be forwarded to the VCCS Office of System Counsel in July of each year to be reviewed and updated as necessary.<sup>5</sup>

## **8. Effective Date and Approval**

This revision to the policy is effective upon its approval by the College President on October 27, 2016.

Policy Approved:

Edna V. Baehre-Kolovani, Ph.D.  
President

Procedure Developed:

Michael D. Summers, Ed.D.  
Interim Vice President for Student  
Affairs

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<sup>5</sup> The State Board for Community Colleges must certify to SCHEV by October 31 of each year that the policy has been reviewed and updated as appropriate.

## **9. Review and Revision History**

The initial version of this policy was approved October 9, 2014.

- Revision 1 provides additional procedural guidance regarding potential conflict of interest with the college official designated to facilitate the informal resolution process or to consider an appeal of the results of a formal resolution process.

Approved January 28, 2015 by President Edna V. Baehre-Kolovani, Ph.D.

- Revision 2 updates the policy to comply with legislative changes approved by the Virginia General Assembly and Governor in 2015.

Approved June 18, 2015 by President Edna V. Baehre-Kolovani, Ph.D.

- Revision 3 updates the policy to 1) reflect the change in title of VCCS Policy 6.5.5, 2) to update the corresponding title of this policy, 2) update titles of TCC positions, 3) specify TCC's Title IX Coordinator, 4) add language required by the VCCS template, and 5) slightly modify the sequence of events for the initial review of the Investigator's Report review by the complainant and respondent.

Revision 3 approved on October 27, 2016 by President Edna V. Baehre-Kolovani, Ph.D.

**APPENDIX A**  
**TIDEWATER COMMUNITY COLLEGE**  
**SEXUAL MISCONDUCT COMPLAINT FORM**

Today's date: \_\_\_\_\_

**Information Regarding the Complainant**

Name of the Complainant: \_\_\_\_\_

Complainant's Phone Number: \_\_\_\_\_ E-Mail: \_\_\_\_\_

The Complainant is (please check one):  student  faculty  classified staff  not affiliated with TCC  
For faculty, staff, & students, indicate whether  current or  former

**Information Regarding the Alleged Victim (if he or she is not the Complainant):**

Name of the alleged victim: \_\_\_\_\_

The alleged victim is (please check one):  student  faculty  classified staff  not affiliated with TCC  
For faculty, staff, & students, indicate whether  current or  former

**Information Regarding the Respondent:**

Name of the Respondent: \_\_\_\_\_

Respondent's phone number (if known): \_\_\_\_\_ E-Mail: \_\_\_\_\_

The Respondent is (please check one):  student  faculty  classified staff  not affiliated with TCC  
For faculty, staff, & students, indicate whether  current or  former

**Information Regarding the Alleged Misconduct (sexual harassment, sexual violence, domestic violence, dating violence, or stalking):**

**Time and date of the alleged misconduct:** \_\_\_\_\_

**Location of the alleged misconduct:**  on college premises: \_\_\_\_\_  
 off college premises: \_\_\_\_\_

**Witnesses or third parties who may have information regarding the alleged misconduct, along with phone number, if known:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Provide a brief description of the alleged sexual misconduct:**

*You may wish to consider including, among other things, some or all the following information in your description: the gender of the parties, the relationship between the parties, whether one or more of the parties were under the influence of alcohol or drugs at the time of the alleged misconduct, whether the respondent used pressure or force (physical or otherwise) in the course of the alleged misconduct, and the frequency (if applicable) of the alleged misconduct.*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Feel free to use the reverse side of this form or separate pages to continue your description, if desired.*

**APPENDIX B**  
**TIDEWATER COMMUNITY COLLEGE**  
**TITLE IX COLLEGE & CAMPUS RESOURCES**

**Position**

**Contact Information**

Title IX Coordinator:	Michael D. Summers, Ed.D. Interim Vice President for Student Affairs Green District Administration Building, Suite 623 757-822-1066 <a href="mailto:MSummers@tcc.edu">MSummers@tcc.edu</a>		
Deputy Title IX Coordinators:	James Edwards Campus Dean of Student Services Chesapeake Campus Pass Building, Room 153 757-822-5121 <a href="mailto:jeedwards@tcc.edu">jeedwards@tcc.edu</a>		
	Emanuel Chestnut Campus Dean of Student Services Norfolk Campus Andrews Building, Room 1112 757-822-1421 <a href="mailto:echestnut@tcc.edu">echestnut@tcc.edu</a>		
	Dana Singleton Interim Campus Dean of Student Services Portsmouth Campus Building A, Room 150 757-822-2180 <a href="mailto:dsingleton@tcc.edu">dsingleton@tcc.edu</a>		
	Marilyn Hodge Campus Dean of Student Services Virginia Beach Campus Princess Anne Building, Room A-102 757-822-7244 <a href="mailto:mhodge@tcc.edu">mhodge@tcc.edu</a>		
Campus Security:			
Chesapeake Campus	757-327-9940	Norfolk Campus	757-327-9924
Portsmouth Campus	757-592-7742	Virginia Beach Campus	757-327-9900
Regional Automotive Center	757-327-9899	Visual Arts Center	757-327-9907
Suffolk Site (Regional Workforce Solutions Center & Truck Driving Program)			757-327-9942