

TITLE: TITLE IX SEXUAL MISCONDUCT

POLICY NO: 4-17

EFFECTIVE DATE: 02/06/2018

VCCS POLICY NO: 3.12; 3.14.1; 6.5.5; 6.2.5.0

REVISED DATE: 01/26/2023

This Policy applies to prohibited conduct by or against students, faculty, staff, and third parties, e.g., contractors and visitors, involving a program or activity of the College in the United States. Conduct outside the jurisdiction of this Policy may be subject to discipline under a separate code of conduct or policy.

E. Definitions

1. Actual Knowledge. Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a College's Title IX Coordinator or any other official of the College who has authority to institute corrective measures on behalf of the College. Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.
2. Advisor. An advisor is an individual who provides the complainant or respondent support, guidance, and advice. Advisors may be present at any meeting or live hearing but may not speak directly on behalf of the complainant or respondent, except to conduct cross-examination during a live hearing. Advisors may be but are not required to be licensed attorneys.
3. Appeal Officer. The Appeal Officer is the designated employee who reviews the complete record of the formal complaint and written statements of the parties during an appeal of a written determination or dismissal of a formal complaint or any allegations therein. The Appeal Officer decides whether to grant the appeal and determines the result of the appeal.
4. Campus. 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.
5. Complainant. A complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. A complainant may file a formal complaint against faculty, staff, students, or third parties.
6. 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. Any sexual activ

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where, why, and how) and about which the accused knew or should have known. This includes incapacitation by using drugs or alcohol. Intoxication is not synonymous with incapacitation.

b) *Physical helplessness*

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15. Exculpatory Evidence. Exculpatory evidence is evidence that shows, or tends to show, that a respondent is not responsible for some or all of the conduct alleged in the notice of allegations. The College must provide the respondent with all exculpatory evidence.
16. Facilitator. A Facilitator guides a discussion between parties during the informal resolution process and reaches a decision to the satisfaction of each party.
17. Final Decision. A final decision is the written document that describes any sanctions imposed and remedies provided to the respondent and complainant, respectively, at the conclusion of the formal resolution process.
18. Formal Complaint. A formal complaint is a document filed and signed by a complainant or signed by the Title IX Coordinator that alleges sexual harassment against a respondent and requests the College to investigate the allegation of sexual harassment. The complainant must be participating in or attempting to participate in an education program or activity of the College when the formal complaint is filed. A complainant cannot file a formal complaint anonymously. The Title IX Coordinator may sign on a complainant's behalf in matters where it is in the best interest of the complainant or the College to do so. The College may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
19. Freedom of Speech. The freedom of speech is a right guaranteed by the First Amendment of the U.S.

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40. Workday. A workday is any eight-hour day, Monday through Friday that the College is open for regular business. Workdays include days when classes are not held, but when employees are expected to be at work.

41. Written Determination. A written determination is the written decision by a Hearing Officer that a respondent is responsible or not responsible for a violation of this Policy by a preponderance of the evidence after a live hearing. A written determination also is the result of an appeal de13([(b)-3(u)-5(si)-13(n)k

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Reynolds Community College Title IX Campus Resources

Title IX Coordinator Contact Information:

Title IX Coordinator: Dean of Students and Title IX Coordinator
Title IX Email: TIIX@reynolds.edu
Telephone Number: 804-523-5502
Office Address: Downtown Campus, Room 117
Mailing Address: P.O. Box 85622, Richmond, VA 23285

Deputy Title IX Coordinator Contact Information:

Deputy Title IX Coordinator: Acting Director of Human Resources and
Organizational Development
Title IX Email: TIIX@reynolds.edu
Telephone Number: 804-523-5249
Office Address: Parham Road Campus, Workforce Development &
Conference Center
Mailing Address: P.O. Box 85622, Richmond, VA 23285

Off Campus:

The following resources offer free and confidential services and support to those impacted by sexual assault, abuse or violence:

Local Community Resources

The Greater Richmond Regional Hotline
804-612-6126
Safe Harbor Hotline (Henrico County)
804-287-7877
YWCA Sexual and Domestic Violence Hotline: Chesterfield and Richmond - 804-612-6126
Virginia Family Violence and Sexual Assault 24-hour Hotline
1-800-838-8238

National and State Resources

LBGTQ Partner Abuse and Sexual Assault Hotline
1-866-356-6998
National Domestic Violence Hotline
1-800-799-SAFE (7233)
1-800-787-3224 (TTY)
National Sexual Assault Hotline
1-800-656-HOPE (4673)
National Teen Dating Abuse Hotline
1-866-331-9474
1-800-331-8453 (TTY)
Rape, Abuse and Incest National Network (RAINN)
<https://ohl.rainn.org/online/>
Support Resources for Veterans
<https://maketheconnection.net>

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3. During non-business hours, members of the campus community should report alleged violations of this Policy to TIX@reynolds.edu.

4. There is no iolds.edu

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6. The College may pursue the formal resolution process even if the complainant requests the College to take no action. The Title IX Coordinator will notify the complainant in writing within five (5) workdays of the decision to pursue the formal resolution process when he or she is unable to maintain confidentiality or respect the complainant's request for no further action. The Title IX Coordinator will give the complainant's wishes due consideration.

I. Immunity

The College encourages the reporting of incidents that violate this Policy. The use of alcohol or drugs should not be a deterrent to reporting a possible incident of sexual harassment. When conducting the investigation, the College's primary focus will be on addressing the alleged sexual harassment and not on alcohol and drug violations that may be discovered or disclosed. The College does not condone underage drinking or the use of illicit drugs; however, the College will grant immunity from disciplinary action based on the personal consumption of alcohol or drugs to individuals who report incidents that violate this Policy, provided that such report is made in good faith. The College may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

J. Timely Warnings

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3.

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- g) The College's disciplinary procedures;
 - h) Information on how the College will protect confidentiality; and
 - i) Written notification about available resources and support services and available supportive measures if appropriate and reasonably available.
3. The College offers the prevention and awareness program to all new and existing students and employees.

P. Academic Freedom and Freedom of Speech

1. 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 constitute sexual harassment only when such communications are sufficiently severe, pervasive, and objectively offensive that they undermine and detract from a student's educational experience or an employee's work performance. Verbal or written communications, without accompanying unwanted sexual physical contact, does not constitute sexual assault.

2. In addressing all complaints and reports of alleged violations of this Policy, the College will take actions to comply with this Policy that recognize and ensure the free speech rights of students and employees. This Policy does not apply to curricula, curricular materials, or abridge the use of any textbooks.

Q. False Statements

The College prohibits knowingly making false statements or knowingly submitting false information. Any individual who knowingly files a false report or formal complaint, who knowingly provides false information to College officials, or who intentionally misleads College officials who are involved in the investigation or resolution of a report or formal complaint may 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 insufficient evidence of a knowing false statement.

R. Consensual 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 to the other 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 prohibited, are unwise and strongly discouraged. The

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5. Law enforcement will notify the local Commonwealth's Attorney within 48 hours of beginning an investigation involving a felonious act of sexual violence. Either campus police, the local law enforcement

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- c) explain to the complainant the process for filing a formal complaint, including providing the complainant with a Formal Complaint Form, when applicable; and,
- d) give the complainant a written explanation of available rights and options as described in Sections

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e)

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- b) The informal resolution of any formal complaint should be completed within thirty (30) workdays of filing the formal complaint. Timeframes governing the formal resolution process temporarily cease, and only recommence upon reentry into the formal resolution process.

V. Formal Resolution Process

1. Formal Complaint Form. To initiate the formal resolution process, complainants must complete the Formal Complaint Form or other written and signed document that requests an investigation, [found in Appendix A or other location], and submit it to the Title IX Coordinator. After due consideration of the complainant's wishes, the Title IX Coordinator may sign a formal complaint. In determining whether to sign a formal complaint, the Title IX Coordinator will consider the following factors:

- a) The seriousness of the allegation(s), including whether the allegation(s) include bodily injury, threats, or the use of weapons;
- b) The complainant's or alleged victim's age;
- c) Whether there have been other similar complaints of against the same respondent; and,
- d) The applicability of any laws mandating disclosure.

2. Notice of Allegations to the Parties. After receiving a formal complaint and as soon as practicable, the Title IX Coordinator will contact the parties to schedule an initial meeting. The correspondence must include the following information:

- a)

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- a) Determine whether an informal resolution is permissible, and whether the complainant wishes to pursue a resolution (formal or informal) through the College or no resolution of any kind;
- b) Explain avenues for formal resolution and informal resolution of the formal complaint;
- c) Explain that if the complainant chooses an informal resolution, that the complainant may withdraw from the informal resolution process at any time prior to the conclusion of the informal resolution process and pursue a formal resolution process, but may not do so after the conclusion of the informal resolution process;
- d) Explain that records related to the informal resolution process will be maintained for a period of seven years and be made part of the record if a formal resolution process is pursued;
- e) Explain the investigative process, including the right to discuss the allegations under investigation and to present fact and expert witnesses and other relevant evidence;
- f) Discuss confidentiality standards and concerns with the complainant;
- g) Discuss non-retaliation requirements;
- h) Refer the complainant to campus and community resources, including the local sexual assault crisis center, domestic violence crisis center, victim support service with which the College has entered into a memorandum of understanding, or other appropriate s

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- i) Inform the respondent of any interim measures that will be imposed and any supportive measures that will be provided to the respondent during the pendency of the investigative and resolution processes;
- j) Refer the respondent to campus and community resources, as appropriate;
- k) Discuss the respondent's the right to due process and a prompt, fair, and impartial resolution of the formal complaint;
- l) If the respondent is a student and the formal complaint involves an alleged act of sexual violence as defined in this Policy, 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 all meetings and the live hearing, if applicable, and an opportunity to inspect, review, and respond to all the evidence; and
- m) Answer questions about the Policy and procedures.

5. Title IX Coordinator's Initial Determination.

- a) Mandatory Dismissal of Formal Complaint. After completing the initial meetings, the Title IX Coordinator must dismiss the formal complaint if:
 - (1) the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this Policy even if proved;
 - (2) the conduct did not involve an education program or activity of the College;
 - (3) the conduct did not occur against a person in the United States.
- b) Optional Dismissal of Formal Complaint. The Title IX Coordinator may dismiss the formal complaint if:
 - (1)

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the Hearing Officer. The Title IX Coordinator will consider such information and will appoint a different Hearing Officer if the Title IX Coordinator determines that a material conflict of interest or bias exists. When the date, time, and place of the live hearing is confirmed, the Hearing Officer will notify the parties in writing simultaneously of the date, time, and place of the live hearing.

2. No later than fifteen (15) workdays before the live hearing, each party must notify the Hearing Officer and the other party of the following:

- a) the name and

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the decision in the pre-hearing determination. The parties may object in writing to such

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- c) A party's advisor must conduct cross-examination at the live hearing directly, orally, and in real time. Only relevant cross-examination questions and follow-up questions, including those that challenge credibility, may be asked. Advisors may not raise objections or make statements or arguments during the live hearing.
- d) The College shall appoint an advisor for the live hearing at no cost to a party when the party does not have an advisor. The appointed advisor may be but is not required to be a licensed attorney or anyone with formal legal training. Advisors may be faculty, staff, students, or volunteers from the local community.

7. Role of the Hearing Officer.

- a) The role of the Hearing Officer is to preside over the live hearing in a fair and impartial manner. After the live hearing, the Hearing Officer must issue a written determination regarding responsibility using the preponderance of the evidence standard of evidence. The Hearing Officer will be the final decision-maker on all matters of procedure during the live hearing.
- b) Before a complainant, respondent, or witness answers a cross-examination or other question, the Hearing Officer first must determine whether the question is relevant or cumulative and explain any decision to exclude a question that is not relevant or is cumulative.
- c) The Hearing Officer may question the parties and witnesses, but they may refuse to respond.
- d) The Hearing Officer must consider all relevant evidence, including statements of a party or witness, even if such statement was not subjected to cross-examination at the live hearing. In determining the amount of weight the Hearing Officer will give to such a statement, the Hearing Officer should consider the reliability of the statement. Factors to consider include, but are not limited to, whether a party or witness commented on or challenged the statement prior to the live hearing, whether the statement is a rumor or something of which the party or witness does not have first-hand knowledge, and whether the person who made the statement has a motive or a conflict of interest that can be demonstrated through other evidence. The level of reliability will determine the amount of weight the Hearing Officer will give to the statement when reaching a determination regarding responsibility. Additionally, the Hearing Officer must not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- e) Within ten (10) workdays after the live hearing, or with good cause shown as soon as possible, the Hearing Officer will submit a written determination to the Title IX Coordinator. The Hearing Officer must make a finding of responsibility or non-responsibility for each allegation and describe the rationale for the finding based on an objective evaluation of the evidence presented at the live hearing. The written determination shall include the following:
 - (1) Identification of the allegations potentially constituting sexual harassment defined under this Policy;
 - (2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and live hearings held. The description of the procedural steps also should include who performed the investigation and the process taken to inspect and review the evidence and disseminate the investigative report, including the adherence to mandated procedural timelines;

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- (3) Findings of fact supporting the determination;
- (4) Conclusions regarding the application of this Policy to the facts;
- (5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any range of disciplinary sanction(s) to be imposed on the respondent, and whether (not which) remedies designed to restore or preserve equal access to the College's education program or activity will be provided to the complainant.
- (6) When applicable, a statement that a notation will be placed on the academic transcript that the respondent was suspended or dismissed for a violation of the College's Title IX Policy.
- (7) When applicable, a statement that the respondent may request the expungement of the notation on the academic transcript for good cause shown and after a period of three years.
- (8) The College's procedures and permissible bases for the complainant and the respondent to appeal. If the complainant or respondent does not contest the finding or recommended sanction(s) and/or remedies and does not file an appeal within the required time frame, the written determination shall be final.

X. Actions Following the Written Determination

1. The role of the Title IX Coordinator following the receipt of the written determination from the Hearing Officer is to facilitate the imposition of sanctions, if any, the provision of remedies, if any, and to otherwise complete the formal resolution process.
2. The Title IX Coordinator must provide the written determination to the parties simultaneously, with a copy to Human Resources, Conduct Officer, and/or other College officials, as appropriate. The appropriate college official, after consultation with the Title IX Coordinator, will determine the sanction(s) imposed and remedies provided, if any.
3. The parties shall receive the final decision on the imposition of sanction(s), if any, and the provision of remedies, if any, simultaneously within ten (10) workdays of receipt of the written determination by the appropriate college official(s). The College must disclose to the complainant the sanction(s) imposed on the respondent that directly relate to the complainant when such disclosure is necessary to ensure equal access to the College's education program or activity.
4. The Title IX Coordinator shall confer as necessary with employees, community resources, or other support services that will provide such remedies.
5. Any sanctions to be imposed or remedies to be provided should begin after five (5) workdays of issuing the final decision unless a party files an appeal.
6. If the respondent is a third party, the Title IX Coordinator will forward the written determination to [vice president/police chief, or other college official]. Within ten (10) workdays, the [designated official] shall determine and impose appropriate sanction(s), as described below. The respondent and the Title IX

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Coordinator shall receive written notification of sanction(s) in the final decision, if any. The Title IX Coordinator may disclose to the complainant information as described above.

Y. Appeals

1. Within five (5) workdays of receipt of the final decision, either party may appeal the Hearing Officer's Written Determination regarding responsibility and the final decision related to sanctions and remedies. The parties also may appeal the College's dismissal of the complaint.

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9. The Appeal Officer shall issue a written determination of the result of the appeal and the rationale for such result within ten (10) workdays of receipt of written statements, if any. The Appeal Officer shall provide the written determination to the parties simultaneously.

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CC. Training and Training Materials

1. Title IX Coordinator(s), investigators, Hearing Officers, Appeal Officers, and Facilitators for the informal resolution process must receive annual training, as appropriate, on the following topics:

- a) The definition of sexual harassment;
- b) The scope of the College's education programs or activities;
- c) How to conduct an investigation and grievance process, including live hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- d) The definition of relevance;
- e) Investigative report writing; and,
- f) Technology that may be used at live hearings.

2. College-appointed advisors receive training on the definitions of sexual harassment, consent, preponderance of the evidence, and relevance.

3. Training materials must not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

4. All training materials must be available on the College's website.

DD. Record Keeping

1. The Title IX Coordinator, Deputy Title IX Coordinator, if applicable, and any other employee as appropriate, e.g., HR Director, shall maintain in a confidential manner, for at least seven (7) years from the date of creation of the last record pertaining to each case, in paper or electronic files of the following:

- a) The complete file for each sexual harassment investigation and formal resolution process, including (1) any determination regarding responsibility; (2) any audio or audiovisual recording or transcript of the live hearing; (3) any disciplinary sanctions imposed on the respondent; and, (4) any remedies provided to the complainant;
- b)

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