

## Sexual Misconduct Policy

### I. Introduction

Tidewater Community College (TCC) believes that its students, faculty, and staff have the right to a safe environment free from all forms of discrimination and conduct that can be considered harassing, coercive or disruptive, including sexual misconduct. The college shall not tolerate sexual misconduct in any form and shall aggressively investigate all reported incidents of abuse on its campuses and in the workplace.

The college considers sexual assault and sexual harassment forms of misconduct that undermine the integrity of the teaching, learning and workplace relationships. No student or employee should be subjected to unsolicited and unwelcome sexual overtures or conduct, of either a verbal or physical nature. For TCC, sexual misconduct does not refer to occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, is objectively and personally offensive, is extremely serious or pervasive, debilitates morale, and therefore, interferes with work and academic effectiveness. Such behavior may result in disciplinary action up to and including dismissal. Additionally, a student or employee charged with sexual misconduct may be prosecuted under Virginia criminal statutes.

### II. Coverage

The TCC Sexual Misconduct policy applies to all students, faculty and staff and includes sexual assault and sexual harassment.

### III. Policy Implementation

- a. All college deans, campus provosts, campus deans of students, academic deans, business managers, and supervisors shall ensure that their facility is in full compliance with this Policy and associated Legal Guidelines. All supervisors shall consult the college's Director of Human Resources/AA/EEO/Title IX coordinator (822-2565) upon receiving a complaint of sexual harassment to ensure a prompt, fair investigation of the complaint.
- b. Complaints of sexual misconduct shall be handled in one of two ways, depending upon whether the complainant is a student or an employee.
  1. A student shall file a complaint with the dean of students on the student's campus (or the campus provost if the complaint is against the dean). (See Section V, Procedure, below for additional information.)
  2. A college employee shall file a complaint with the appropriate department head of the accused. The employee may choose to file the complaint with her/his own department head who will notify the supervisor of the accused (see Section V, Procedure, below for additional information).
- c. An employee may also initiate a complaint by filing such complaint in writing directly with the college president.

# CHAPTER 13

## Policies and Procedures

- d. All claims must be thoroughly investigated. The college's Title IX coordinator shall provide guidance and assistance in the proper handling of any allegations.

### IV. Legal Definitions and Guidelines

#### 1. Sexual Assault

Sexual assault is defined as sexual intercourse without consent, including rape (whether by acquaintance or stranger), sodomy, or other forms of sexual penetration. To constitute lack of consent, the acts must be committed either by force, threat of force, intimidation, or through use of victim's mental helplessness of which the accused was aware or should have been aware. Mental helplessness includes incapacitation by alcohol or other drugs. Sexual assault also includes intentionally touching, either directly or through clothing, of the victims genitals, breasts, thighs, or buttocks without the victim's consent, as well as touching or fondling of the accused by the victim while the victim is forced to do so against her/his will.

#### 2. Sexual Harassment

Sexual harassment is defined as unwelcome sexual advances, a request for sexual favors, and/or other verbal or physical conduct or written communications of a sexual nature, which is intimidating, hostile, or offensive. Sexual harassment shall have occurred when:

- a. Accepting or tolerating such conduct is made a term or condition of a student's status or an individual's employment either explicitly or implicitly;
- b. Accepting or rejecting such conduct is used as the basis for academic or employment decisions affecting the student or employee; or
- c. Such conduct creates an intimidating, hostile, or offensive working or learning environment, or substantially interferes with an employee's work performance or student's academic performance.

Sexual harassment is contrary to the values of Tidewater Community College and the Virginia Community College System (VCCS). It shall not be tolerated in any form, as outlined in Title VII of the Civil Rights Act of 1964, and as in Title IX of the Education Amendments of 1972, which prohibits sexual harassment. All reported instances of sexual harassment shall be investigated. The Director of Human Resources is the college's Title IX coordinator.

### V. Procedure

Complaints of sexual misconduct shall be handled through the following procedures for students and employees.

For both students and college employees, sexual misconduct should be reported immediately (but in any case, not more than 60 calendar days after the offense without "good cause" that can be documented). For both students and employees, the college's Director of Human Resources/AA/EEO/Title IX coordinator is available for assistance.

For both students and college employees, the alleged victim may request counseling at each stage of the process. The alleged victim may choose any of the professional counselors at the college to provide this “interim relief” during this process.

### 1. Student Complaint

To begin the process, the complainant (student) shall file a written complaint against the accused (student or college employee) with the campus dean of students. If the complaint is against the dean of students, it should be filed in writing with the campus provost. The student may request the assistance of a counselor of her/his choice to assist with this process.

Upon receiving a student’s complaint, the campus dean shall launch an investigation, gather appropriate information, and call witnesses if necessary. This investigation shall be completed within thirty working days after initiation. Where the allegations are complex or other factors delay the investigative process, an extension may be granted beyond the thirty working days if the extension is mutually agreeable between the complainant and the campus dean. The decision shall be given to the complainant and the accused in writing at the conclusion of the investigation. The complainant or the accused may appeal this decision within ten working days of receiving the written decision to the campus provost (or the college dean of academic and student affairs if the complaint is against the campus dean). The provost shall hear the evidence, review the campus dean’s decision, and render a decision within ten working days after receiving notice of the appeal. The decision of the provost may be appealed by either party to the college’s vice president for academic and student affairs within ten working days after the provost’s decision is rendered. The vice president for academic and student affairs shall review the case and shall provide a written decision within ten working days after notice of appeal of the provost’s decision to the parties involved. If the decision is rendered in favor of the complainant, the written decision shall be placed in the official record of the accused.

A complainant’s sexual history shall be excluded from the proceedings (including any prior charges of sexual misconduct) except to the extent that history relates specifically to the accused. Further, the college shall safeguard the identity of the complainant outside of the confidential proceedings conducted by all parties.

### 2. College Employee Complaint

If the complainant is a college employee, the offense is reported to the appropriate department head of the accused. The college’s Title IX coordinator may be contacted for the appropriate department head if not known. If the complaint of harassment is filed by an employee against a student, the employee files the complaint with the campus dean of students. To begin the process, the complainant shall file a written complaint against the accused with the appropriate department head or with the campus dean of students. The employee may choose

# CHAPTER 13

## Policies and Procedures

to file the complaint with her/his own supervisor who shall report the incident to the department head of the accused within five working days of receiving the complaint.

Upon receiving the written complaint, the department head of the accused or campus dean of students shall launch an investigation, gather appropriate information, and call witnesses if necessary. This investigation shall be completed within thirty working days after initiation. Where the allegations are complex or other factors delay the investigative process, an extension may be granted beyond the thirty working days if the extension is mutually agreeable between the complainant and the department head or campus dean of students. The decision shall be given to the complainant and the accused in writing at the conclusion of the investigation. The complainant or the accused may appeal the department head's or campus dean's decision within ten working days after receiving the written decision to the campus provost or the appropriate college dean. The provost or appropriate college dean receiving the appeal shall review the case and shall render a written decision within ten working days after receiving notice of appeal. The complainant or the accused may then make a final appeal to the college president within ten working days of the provost's or college dean's written decision. After reviewing the case, the president shall issue a final decision within ten working days of receiving the appeal. If the decision is ruled in favor of the complainant, copies of the decision shall be placed in the official personnel file of the accused (or student file, if the accused is a student). At this point, the accused or the complainant may appeal the decision through the applicable grievance procedure.

A complainant's sexual history shall be excluded from the proceedings (including any prior charges of sexual misconduct) except to the extent that history relates specifically to the accused. Further, the college shall safeguard the identity of the complainant outside of the confidential proceedings conducted by all parties.

### **VI. Non-Retaliation**

The college explicitly prohibits any and all retaliatory action against members of the college community who bring sexual misconduct charges or assist in investigating such charges. More specifically, neither their academic standing (in the case of students) nor conditions and terms of employment (in the case of employees) shall be adversely affected.

Tidewater Community College encourages all members of the college community to be aware of the negative consequences of sexual misconduct and the options and support available to victims. The college urges the complainant to seek assistance using any appropriate resources. The college's Equal Opportunity (EEO) Officer is located in the Office of Human Resources and may be contacted by calling 757-822-1704.