

ESCC Policy on Sexual Violence, Domestic Violence, Dating Violence, and Stalking

Effective Date: July 1, 2015
Responsible Office: Student Services

I. PURPOSE

The purpose of this Policy is to establish that the College 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.

II. AUTHORITY and NOTICE of NONDISCRIMINATION

The President has given the College Title IX Coordinator the responsibility and authority to establish and enforce the college's Preventing Violence in the Workplace Policy.

As a recipient of federal funds, Eastern Shore 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. Jeanne Natali, who may be contacted by phone at (757) 789-1759 or by email at TitleIXCoordinator@es.vccs.edu.

III. APPLICABILITY

This Policy applies 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.

IV. DEFINITION¹

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: The term "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

¹ Colleges must use the definitions set out in this Policy. The Campus SaVE Act states that the definitions of sexual assault, domestic violence, dating violence, stalking, and consent must be of the applicable jurisdiction.

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: A complainant refers to an individual who may have been the subject of a violation of this Policy and files a complaint against a faculty, staff member or student.

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: Dating violence is 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: Domestic violence is 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: A 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. Responsible employees are required to forward all reports of violations of this Policy to the appropriate Title IX Coordinator.

Responsible employees also must report to the Title IX Coordinator any information obtained in the course of his employment that an act of sexual violence may have been committed against a student or may have 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. [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 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.

Sex Discrimination: Sex discrimination is the unlawful treatment of another based on the individual's sex that excludes an individual from participation in, 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: Sexual assault is defined as the intentional 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: 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: Sexual harassment is defined as 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: 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 sexual harassment, sexual assault, sexual exploitation, and sexual violence.

Sexual Violence: Sexual violence is 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: 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.

V. POLICY

Eastern Shore 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 Virginia Community College System: 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.

VI. 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 by this Policy. 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.

VII. PROCEDURES

A. Reporting Incidents.

1. Members of the campus community who believe they have been subjected to any of these crimes should immediately report the incident to campus or local police. All emergencies or any incident where someone is in imminent danger should be reported immediately to campus police/security at (757) 789-7990 or local police by dialing 911.

2. 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 Coordinator² 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.

Eastern Shore Community College Title IX Campus Resources

Title IX Coordinator:

Dr. Jeanne Natali

(757) 789-1759

TitleIXCoordinator@es.vccs.edu

After normal business hours, members of the campus community should report alleged violations of this Policy to Security. Security should forward the report to the Title IX Coordinator as soon as possible during the next business day.

3. 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.

B. 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. The College will comply with all requests for cooperation by the campus police or local law enforcement in investigations. The College may be required to suspend the Title IX investigation while the campus police or the local law enforcement agency gathers evidence. The College will resume its Title IX

² If colleges have different Title IX Coordinators for students, staff, and faculty, the policy should indicate clearly to which Title IX Coordinator reports should be made.

investigation as soon as the campus police or local law enforcement agency has completed gathering evidence. Otherwise, the College's investigation will 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.

C. Confidentiality and Anonymous Reports.

1. Individuals may be concerned about their privacy when they report a possible violation of this Policy. The College has a responsibility to end conduct that violates this Policy, prevent its recurrence, and address its discriminatory effects. For this reason, some College employees may not keep secret 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.

2. Responsible employees must report all alleged violations of this Policy to the Title IX Coordinator. Other campus employees have a duty to report sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes (Campus Security Authority (CSA) under the Clery Act). CSAs include student/conduct affairs personnel, campus law enforcement, local police, student activities staff, human resources staff, and advisors to student organizations. Reports received by the College concerning the abuse of a minor must be reported in compliance with state law.

3. 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. 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 will 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 may 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 of 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.

Therefore, the College may pursue an investigation even if the complainant requests that no action is taken and the College will not be able to ensure confidentiality in all cases. The

College will notify the complainant in writing when it is unable to maintain confidentiality or respect the complainant's request for no further action.

4. 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, 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.

5. 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 Paragraph C (4). 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 team meeting shall disclose the information to the local Commonwealth's Attorney, including the personally identifiable information, if such information was disclosed pursuant to Paragraph C (4). 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.

6. 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.

D. Amnesty.³

The College encourages the reporting of incidents that violate this Policy. The use of alcohol or drugs should not be a deterrent to reporting an incident. When conducting the investigation, the College's primary focus will 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

³ This provision is optional, but recommended.

drinking; however, the College will 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. The College may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

E. Timely Warnings.

The College 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 campus community. The College will 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 campus community to make decisions to address their own safety in light of the potential danger.

F. Interim Measures.

1. 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 against the complainant or complainant's witnesses. The College 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.

2. Notwithstanding the above, the College 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 will enforce orders of protection issued by courts on all College property to the extent possible.

3. 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.

G. Sexual and Domestic Violence Procedures.⁴

Anyone who has experienced sexual violence, domestic violence, dating violence, or stalking should do the following:

⁴ This is required to be addressed in the policy under the Campus SaVE Act.

- Safely find a place away from harm.
- Call 911 or if on campus, contact campus police/security.
- Call a friend, a campus advocate, a family member or someone else you trust and ask her or him to stay with you.
- 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 you suspect that you may have been given a drug, ask the hospital or clinic where you receive medical care to take a urine sample. The urine sample should be preserved 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, call the Virginia Family Violence & Sexual Assault Hotline at 1-800-838-8238. Help is available 24 hours a day.⁵
- You 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.
 - Do not wash your hands, bathe, or douche. Do not urinate, if possible.
 - Do not eat, blow your nose, drink liquids, smoke, or brush your teeth if oral contact took place.
 - Keep the clothing worn when the incident occurred. If you change clothing, place the worn clothing in a paper bag.
 - Do not destroy any physical evidence that may be found in the vicinity of the incident by cleaning or straightening the location of the crime. Do not clean or straighten 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.

H. Written Notification of Rights and Options.⁶

Members of the campus 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 the (i) 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

⁵ Colleges may use the local area’s domestic violence/sexual assault hotline number.

⁶ This is required to be addressed in the policy under the Campus SaVE Act.

investigation and adjudication under the College's policies; (v) the complainant's right 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 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.⁷

I. Support Services.⁸

1. All students and employees will receive information in writing of available counseling, health, mental health, victim advocacy, legal assistance, and other services available in the community and on campus.

2. Students and employees may seek personal assistance from the following:

- ESCC Counselors in Students Services @ 757.789.1730
- Eastern Shore Community Services Board Emergency Crisis Hotline @ 757.442.7707
- Eastern Shore Coalition Against Domestic Violence (ESCADV) @ 757.787.1329
- Light House Ministries @ 757.787.2535
- Riverside Shore Memorial Hospital @ 757.414.8000

J. Education and Awareness.⁹

1. The College conducts a program to educate students and employees about this Policy and its procedures. The education and awareness program is designed to promote awareness of sexual violence, domestic violence, dating violence, and stalking.

2. Incoming students and new employees must take part in a mandatory primary prevention and awareness program. The program, at a minimum, shall include:

⁷ The information required by the Campus SaVE Act is included in this Policy: (a) possible sanctions or protective measures that the College may impose following a final determination of a disciplinary procedure regarding sexual violence, domestic or dating violence, or stalking (b) procedures individuals should follow if sexual violence, domestic or dating violence, or stalking has occurred; (c) procedures for disciplinary action in cases involving sexual violence, domestic or dating violence, or stalking, including a clear statement that the College's proceedings shall provide a prompt, fair, and impartial investigation and resolution; (d) information about how the College will protect the confidentiality complainants; (e) written notification of students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community; and (f) written notification about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested and if such accommodations are reasonably available, regardless of whether the complainant chooses to report the crime to campus police or local law enforcement. Therefore, Colleges may fulfill this requirement by providing anyone who makes a report a copy of this Policy.

⁸ Required by the Campus SaVE Act.

⁹ Required by the Campus SaVE Act.

- 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.

3. 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.

K. Resolution of Complaints.

1. The College has an obligation to provide prompt, fair, and impartial investigation and resolution of alleged violations to this Policy and is committed to so doing. Title IX Coordinator(s), investigators, and hearing officials must receive annual training on sexual violence, domestic violence, dating violence, and stalking, and the conduct of investigations and hearings. The College may resolve complaints either by an informal or formal resolution process.

2. 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 will 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.

L. Formal Resolution Process.

1. Complainant’s Initial Meeting with the Title IX Coordinator.¹⁰ As soon as is practicable, the Title IX Coordinator will contact the complainant to schedule an initial meeting. If the complainant 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 complainant may be accompanied by an advisor of his or her choosing. At this initial meeting, the Title IX Coordinator will:

- a) Provide the complainant a copy of this Policy;

¹⁰ The College may request a meeting with a third party complainant, but it may not require his or her attendance.

- b) Provide the complainant with a Complaint Form, 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 campus 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 fair and impartial resolution of the complaint;
- 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.

2. Respondent's Initial Meeting with the Assigned Title IX Coordinator.¹¹ As soon as is practicable, the Title IX Coordinator will schedule an initial meeting with the respondent. The respondent may be accompanied by an advisor of his or her choosing. During the initial meeting with the respondent, the Title IX Coordinator will:

- a) Provide the respondent, in writing, sufficient information to allow him or 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 campus and community resources, as appropriate;
- j) Discuss with the respondent, as appropriate, possible interim measures that can be

¹¹ The College may request a meeting with a third party respondent, but it may not require his or her attendance.

provided to the respondent during the pendency of the investigative and resolution processes;

- k) Discuss the respondent's right to due process and a 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 withdraws while under investigation, and that the investigation will continue in the respondent's absence while being afforded notice of the charges (and hearing, if applicable) and an opportunity to respond to all of the evidence.

3. Title IX Coordinator's Initial Determination. a) 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; (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.

b) 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. Appointment of the Investigator and Conduct of the Investigation. a) If the Title IX Coordinator determines that an investigation should be conducted, he or she will appoint an investigator within five (5) workdays of the completion of the initial meetings. The Title IX Coordinator will share his or her 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 investigator, 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. 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.

b) 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.

c) 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.

d) 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 parties will be notified in writing and given the reason for the delay and an estimated time of completion.

e) 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.

f) 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;
- 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); and
- The outcome of the investigation.

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

h) The withdrawal of a student from the College while under investigation for an alleged violation of this Policy involving an act of sexual violence shall not end the College's investigation and resolution of the complaint. The College shall continue the investigation 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 shall place a notation on the student's academic transcript that states, "*Withdrew while under investigation for a violation of Eastern Shore Community College's sexual misconduct policy.*" After the College has completed its investigation and resolution of the complaint, the College shall either (1) remove the notation if the student is found not responsible or (2) change the notation to "*Withdrew while under investigation and subsequently found responsible for a violation of Eastern Shore Community College's sexual misconduct policy.*" Upon a final determination, the Title IX Coordinator immediately shall notify the registrar and direct that the appropriate notation is made.

L. Determination of Title IX Coordinator and Corrective Action Report.

1. 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.

2. 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.

3. 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.

4. 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.

5. If the respondent is a student, the Title IX Coordinator will forward the reports to the Interim Vice President for Academic and Student Affairs. Within ten (10) workdays, the Interim Vice President for Academic and Student Affairs 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.

6. If the respondent is an employee, the Title IX Coordinator will forward the reports to the employee's supervisor and Human Resources Officer. Within ten (10) workdays, the supervisor and Human Resources Officer shall determine and impose appropriate sanctions, as described below. The respondent and the Title IX Coordinator shall receive written notification of sanction(s).¹²

7. If the respondent is a third party, the Title IX Coordinator will forward the reports to Vice President of Finance and Administration and police chief. Within ten (10) workdays, the Vice President of Finance and Administration 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.

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

¹² 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.

M. Informal Resolution.

1. 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 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.
2. 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.
3. 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.
4. There is no right of appeal afforded to the complainant or the respondent following the informal resolution process.

VIII. Sanctions & Corrective Actions.

- A. The College will 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 depend upon the nature and gravity of the misconduct, any record of prior discipline for similar violations, or both.
- B. The range of potential sanctions and corrective actions that may be imposed against a student includes but is not limited to the following: required discrimination or harassment education, a 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, probation, suspension, and dismissal from the College.
 - a. 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 Eastern Shore 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 purpose of this section following 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 registrar to remove the notation from the student's academic transcript.

b) 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 Eastern Shore Community College's sexual misconduct policy.*" Students are strongly encouraged not to withdraw and to participate in the investigation and resolution of the complaint.

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

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

C. Sanctions for faculty and staff shall be determined in accordance with the VCCS Policy Manual and the Department of Human Resource Management 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.

D. Third parties, e.g., contractors, will be prohibited from having access to the campus. Depending on the violation, this prohibition may be permanent or temporary.

E. Title IX Coordinator will determine the final accommodations to be provided to the complainant, if any.

F. [Sanctions imposed do not take effect until the 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 campus community, generally. Sanctions will continue in effect until such time as the appeal process is exhausted in such cases.]

IX. Appeals. *(Please note that appeals are not required by Title IX or the Campus SaVE Act. However, an appeals process that provides a formal hearing is strongly recommended. Colleges may use procedures already in existence or develop a separate appeals process if they provide*

*the opportunity for an appeal.*¹³ *Below are two recommendations for an appeals process.)*

Option 1:

1. Either the complainant or the respondent has the opportunity to appeal the outcome of the written investigative report or the sanction(s) recommended. Individuals must submit a written request for appeal to Title IX Coordinator within ten (10) workdays of the outcome of the investigation or imposition of sanction(s), whichever is later. The appeal request must cite the reason(s) for the appeal and provide evidence to support those reason(s).

2. Appeals shall be granted for the following reasons only:¹⁴

- The investigator exhibited unfair bias which influenced the results of the investigation;
- New evidence, unavailable at the time of the investigation that could substantially impact the investigator's finding. The appeal should explain why the evidence was unavailable previously and why such evidence may substantially impacts the investigator's finding;
- Error in the conduct of the investigation that is of such magnitude as to deny fundamental fairness;
- The sanction(s) are unjustified by the evidence and/or mitigating factors warrant a lesser sanction or aggravating factors warrant a greater sanction.

3. Within five (5) workdays of receipt of the written request for appeal, [the applicable college official] shall notify the parties whether the appeal is granted. This decision is final and may not be appealed. If the appeal is granted, the parties shall be notified in writing. The Hearing Committee Chair will be notified to schedule a hearing when the parties are notified that the appeal has been granted. The Hearing Committee Chair will notify the parties of the time and place of hearing before the Hearing Committee¹⁵ concurrently. Such hearing typically will be scheduled within fifteen (15) workdays of the decision to grant the appeal. If an extension beyond fifteen (15) workdays is necessary for good cause, both parties will be notified of the expected time frame concurrently.

4. Within five (5) workdays of scheduling the hearing, parties must submit a written statement to the Hearing Committee Chair that (i) identifies the names and addresses of witnesses that are requested to be called at the hearing; (ii) identifies and includes copies of any documents that will be used as evidence at the hearing; and (iii) requests a specific remedy. A party not appealing the findings or sanction(s) may choose not to submit information. If a non-appealing party elects not to participate in the hearing, the Hearing Committee shall use evidence and

¹³ Colleges may not deny the procedural rights afforded by law to classified employees. The procedural rights afforded to faculty under the VCCS Policy Manual still apply unless and until the VCCS Policy Manual is revised by the State Board. Therefore, if a college's process includes a formal hearing under this Policy, it still must provide staff and faculty the right to grieve any disciplinary sanction imposed against them under the applicable grievance process. With respect to students, colleges should clearly indicate whether the complaint resolution procedures outlined in its sexual misconduct policy supersede the regular student grievance procedures.

¹⁴ This is optional. Colleges may confer a right to an appeal in all cases.

¹⁵ Colleges may choose the composition of the hearing committee and the selection thereof. All members of the committee must receive training on how to conduct a hearing.

statements from the record.

5. The Hearing Committee Chair shall provide the witness list and copies of any documents that will be used as evidence at the hearing to each party no later than five (5) workdays prior to the hearing.

6. The Title IX Coordinator shall forward the written investigative report and the written corrective actions report to the Chair of the Hearing Committee as soon as possible, but no later than ten (10) workdays prior to the hearing.

7. Each party may retain an attorney at his or her own expense or designate a non-attorney advisor to accompany him or her at the hearing. If either party has retained legal counsel or a non-attorney advisor, the party must immediately notify the Hearing Committee Chair of such and provide contact information. The role of the attorney or advisor for the parties shall be limited to advice and consultation with the parties or the parties' witnesses. Attorneys and advisors may not question witnesses, raise objections, or make statements or arguments to the Hearing Committee at the hearing. If either party is represented by an attorney, the College may receive assistance from the Office of System Counsel of the VCCS System Office.

8. The Hearing Committee Chair shall preside over the hearing. The rules of evidence shall not be strictly applied. All evidence and testimony relevant to whether a violation of this Policy occurred and whether the grounds for appeal are met by a preponderance of evidence shall be considered. The hearing shall be conducted in a fair and impartial manner. The Hearing Committee Chair and its members will question the parties and witnesses. The parties may not question one another. The Hearing Committee Chair will be the final decision-maker on all matters of procedure during the hearing. All hearings will be closed to the public.

9. The past sexual history of either party with anyone other than each other is not admissible. Either party may call character witnesses, however.

10. The Hearing Committee Chair will arrange for the hearing to be recorded. Each party will receive a copy of the recorded hearing upon request. Parties may prepare a transcript of the recording at their own expense.

11. Within ten (10) workdays of the hearing, the Hearing Committee Chair will submit a written decision to the parties, the Title IX Coordinator, and the president of the College, concurrently. The decision shall include: (i) a description of the grounds for appeal; (ii) whether such grounds are accepted or rejected and the rationale for such determination; (iii) the Committee's decision to uphold or reject the findings of the written investigative report and/or the sanction(s) and the rationale for such determination; (iv) if the written investigative report's findings and/or sanction(s) are rejected, the findings of the Committee and resolution.

12. Either party may appeal the Hearing Committee's decision to the president of the College. The president's decision is final.

Option 2:

Either the complainant or the respondent has the opportunity to appeal the outcome of the written investigative report or the sanction(s) recommended. Appeals shall be conducted in accordance with the applicable grievance procedures described in the Student Handbook, VCCS Policy Manual, and the Grievance Procedure Manual of the Department of Human Resource Management. Third parties may request that the College reconsider its decision in writing to the Vice President of Finance and Administration.¹⁶

X. Academic Freedom and Free Speech.¹⁷

A. 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, is not sexual violence or sexual assault. Verbal or written communications 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.

B. In addressing all complaints and reports of alleged violations of this Policy, the College will take all permissible actions to ensure the safety 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.

XI. False Allegations.¹⁸

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 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 not necessarily proof of knowingly filing a false complaint.

XII. Consensual Relationships.¹⁹

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

¹⁶ Each party could file a grievance and the college would handle each grievance separately. Grievances involving classified staff may use the expedited process or proceed immediately to a formal hearing when applicable.

¹⁷ This section is optional, but recommended.

¹⁸ This section is optional.

¹⁹ This policy was approved by the State Board on May 21, 2015.

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.

XIII. Record Keeping.

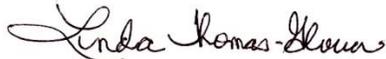
The Title IX Coordinator shall maintain, in a confidential manner, for at least five (5) years, paper or electronic files of all complaints, witness statements, documentary evidence, written investigative reports, review committee reports, written corrective action reports, sanctions, appeal hearings and associated documents, the responses taken campus 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.

A. This Policy shall be forwarded to the VCCS Office of System Counsel in July of each year to be reviewed and updated as necessary.²⁰

XIV. INTERPRETATION

The authority to interpret this policy rests with the President, and is generally designated to the Title IX Coordinator.

Approved:



Linda Thomas-Glover, President

Date: July 1, 2015

***This Policy updates an earlier edition approved and signed 11-18-2014.

***This Policy was updated September 1, 2018, to reflect a new Title IX Coordinator

²⁰ The State Board must certify to SCHEV by October 31 of each year that the policy has been reviewed and updated as appropriate.

