

## **Southwest Virginia Community College Response and Procedural Guide to Sexual Misconduct**

### **Introduction**

This manual was written as a guide for SWCC students and/or employees who have reported, witnessed, or been a victim of any incident of sexual misconduct or sexual violence on any of our campus locations. This step-by-step guide addresses many of the questions you may have. The Title IX Coordinator/Deputy Coordinator will go over this manual with you and will assist you throughout the process.

### **Applicability**

This manual will be made available and 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.

### **Reporting Incidents**

If you believe that you are a victim of or have witnessed sexual misconduct, you should report the incident to campus police, the Title IX Coordinator/Deputy Coordinator, or the TIPS reporting system on the website (sw.edu). All emergencies or any incident where someone is in imminent danger should be reported immediately to campus police at 276-964-7221 or 276-964-HELP (4357) or 911.

Whether or not a report is made to law enforcement, you should report alleged violations the Title IX Coordinator/Deputy Coordinator in person or by using the online TIPS reporting system located on the SWCC website (sw.edu). The Title IX Coordinator/Deputy Coordinator is solely responsible for overseeing the prompt, fair, and impartial investigation and resolution of complaints filed with the College. Although strongly encouraged, you are not required to submit a complaint on the Complaint Form or in writing.

### **Confidentiality**

All information reported to the Title IX Coordinator / Deputy Coordinator will be kept confidential to the extent allowable under federal and state law. Certain incidents such as child abuse, threatening harm to self or others or any incident that poses an immediate threat to the college community are required by law to be reported. Information pertaining to such incidents will be treated with sensitivity and disseminated with care when it is necessary to do so for purposes of conducting an investigation or

taking emergency action. However, the College reserves the right (as permitted or required by applicable law) to issue timely warnings and make other announcements to the College community when the College determines that there is a serious or continuing threat to members of the College community or that there is another significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees on the College's campus. When issuing timely warnings, the College **will withhold as confidential the names or identifying characteristics of possible victims**. Under federal law, the College must report the occurrence of certain designated crimes that occur on campus or in certain other designated areas; including forcible and non-forcible sex offenses as defined by the federal government (see definitions at the end of this manual).

## **What to expect once a report has been filed**

### **Initial Response**

The Title IX Coordinator/Deputy Coordinator will meet with the complainant (the individual who filed a Title IX complaint) as quickly as soon possible to discuss your options, rights, and responsibilities. At that time, you may file a written complaint or if you have already filed a complaint using our online TIPS system that report will be reviewed with you by the Title IX Coordinator/Deputy Coordinator. A written complaint is not mandatory. This information will be used to investigate and resolve your complaint. If you should request that your identity remain confidential this will hamper the College's ability to resolve the complaint. If you request that the College maintain the confidentiality of your identity or not pursue an investigation, the College may be unable to honor your request because it has a legal responsibility to address sex discrimination and sexual misconduct. As a result, the College will seek to respect your request, but it must also take into account the seriousness of the alleged incident and threats to community safety, along with the accused rights for notification under federal and state law. If the College cannot abide by your requests, it will consult with you and provide written notice to you about its chosen course of action.

### **Interview with the accused individual**

As soon as possible, after the initial meeting with the complainant, the accused individual will be notified that a complaint alleging sexual misconduct has been made. They will also be interviewed with discussion of the options afforded to them, their rights and responsibilities, the Hearing Panel process, the prohibition against retaliation, the need to preserve any relevant evidence or documentation in the case, and the availability of interim measures and remedies. The accused will also be provided with a copy of this manual.

During the initial interview with the accused person, he/she may decide to accept responsibility for all or part of the conduct reported. In that case, the Title IX Coordinator /Deputy Coordinator or their designee may initiate an investigation in order to provide additional information to the Hearing Panel and/or Dean of Student Success in determining appropriate sanctions. If the individual does not choose to accept responsibility, a formal investigation process will begin.

## **Interim Measures**

Upon receipt of a report, the Title IX Coordinator/Deputy Coordinator and/or their designee will work with the complainant and the accused to take necessary measures (if needed) to address the safety and well-being of both parties. Such measures may include but are not limited to counseling services, no contact orders, provision of escorts along with academic and campus work accommodations.

## **The Investigation Process**

### **Investigation**

Depending upon the nature of the alleged Policy violation and the willingness of the accused individual to accept responsibility, the Title IX Coordinator will initiate and coordinate a Title IX investigation as soon as practicable.

The College is committed to undertaking prompt, thorough, impartial and fair investigations, and to treating all individuals with respect and sensitivity. The College will seek to complete the investigation of any alleged violation of the Policy and arrive at a resolution (excluding any appeals) within 60 days of the filing of a complaint or the date on which the College becomes aware of an alleged violation of the Policy unless the College determines that additional time is required. The College will provide the complainant and the accused individual with periodic updates as it deems appropriate regarding the status of the process, timely notice of meetings, and will provide both parties with timely and equal access to any information that will be used during the College's disciplinary proceedings and meetings. Extenuating circumstances could require the process to extend beyond that time frame and the College will determine at its discretion if such circumstances exist and will notify you and the accused individual in writing of the delay and the reason for the delay.

The nature and extent of the investigation will vary depending upon the circumstances, including whether the parties are amenable to pursuing an informal resolution and the matter is eligible for informal resolution, as discussed below. As part of the investigation, the investigator(s) will seek to interview both the complainant and the accused. To help ensure a prompt and thorough investigation, you are encouraged to provide as much information as possible, including the following:

- The name, department, and position of the person or persons allegedly causing the prohibited conduct.
- A description of any relevant incident(s), including the date(s), location(s), and the presence of any witnesses.
- The alleged effect the incident(s) has or may have on your opportunity to benefit from the College's programs or activities.
- The names of other individuals who might have relevant information about the alleged actions.
- Although it is not required, any steps you have taken to try to stop the prohibited conduct.
- Any other information you believe to be relevant to the alleged prohibited conduct.

- The accused is also expected to provide as much information as possible in connection with the investigation.

Upon conclusion of the investigation a report that summarizes and analyzes the allegations, the relevant facts, and any supporting documentation (which may include statements by the parties, third-party witnesses, or others with information and any physical, written, or electronic or other evidence). This Title IX Investigative Report will be shared with you and the accused individual and will be used in either an informal or formal resolution procedure, as appropriate and as outlined below.

### **Informal Resolution**

The complainant or the accused individual may choose an informal resolution process. At that time, the relevant College official will share the Title IX Investigative Report with both parties if such a report has been completed as of that time. The Title IX Coordinator/Deputy Coordinator and/ or other College official will discuss possible informal resolution procedures. If both parties find the resolution/sanction(s) taken through the informal procedures to be acceptable, the informal resolution is completed and the resolution will be documented.

Allegations of sexual misconduct, including allegations of sexual assault or sexual violence, and allegations of interpersonal violence and/or stalking involving physical contact **may not** be resolved using an informal resolution procedure. However, other alleged violations of the Policy, including some allegations of sexual harassment, may be resolved using an informal resolution process overseen by one or more College representatives if the College determines, in its discretion, that such a process would be appropriate; and all parties agree to participate.

During the informal process, you **will not** be required to deal directly with the accused individual without the College's involvement. Instead, after an initial investigation of the complaint you may agree to attempt to resolve the complaint informally.

The complainant or the accused individual may request that the informal resolution process be terminated at any time, in which case the formal resolution procedure would commence. In addition, any party can pursue formal resolution if they are dissatisfied with a proposed informal resolution. Finally, as described above, the College may elect to pursue a formal resolution procedure even if you do not wish to bring the matter to a Grievance Hearing Panel.

### **Notice of Hearing**

The Title IX Coordinator /Deputy Coordinator and/or other college official will provide any and all statements from you, the accused, and any witnesses along with the Title IX Investigative Report to the Chair of the Hearing Panel. Unless the Grievance Hearing Panel determines in its discretion that more time is required, a hearing will be held within 21 days of the completion of the Title IX Investigative Report and its submission to the Title IX Coordinator unless the College determines that additional time is required. Both parties will be informed in writing of the date, time, and location of the hearing and will be informed of the names of persons serving on the Grievance Hearing Panel. The parties will be

given at least 14 days advance notice of the hearing unless the Title IX Coordinator/Deputy Coordinator determines that less time is appropriate or required in a given situation. If you or the accused individual elects not to request or participate in a hearing, the College reserves the right to take the matter to a hearing.

Either party may request that the hearing be rescheduled at any time and must specify the reasons for the request. The Title IX Coordinator/Deputy Coordinator and/or their designee will determine whether to grant the request. Either party may ask that a member of the Grievance Hearing Panel be removed if the party believes that person has bias, conflict of interest or cannot be fair and impartial. These requests must be **received in writing** by the Title IX Coordinator/Deputy Coordinator and/or other college designee within 3 days after notification of the hearing date.

In addition, the College may, at its discretion, impose an interim suspension or leave of absence in cases where the College believes there is risk of harm to others. Any interim measures or remedies will be taken in a manner that minimizes the burden on you (the person filing the complaint) and all parties will be informed that the College **prohibits any retaliation** against parties who have filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this Policy.

- **The Hearing Panel** Hearings to address complaints alleging violations of the Policy by students will be conducted by a Grievance Hearing Panel, except that the Title IX Coordinator may, in extraordinary circumstances, delegate the responsibility for such a hearing to the Dean of Student Success or other designee if the Grievance Hearing Panel cannot reasonably be convened or the College otherwise determines in its discretion that a complaint or reported violation of this Policy would be better resolved through some means other than the Hearing process described below. The Hearing Panel shall consist of a pool of no fewer than 5 individuals from the College community who have received training at least annually in College policies, the dynamics of sexual misconduct, the determination of credibility, and the preponderance of the evidence standard. In addition to these 5 persons, the Hearing Panel will also have a Chair who will be selected from the panel.
- **Before the Hearing** The Title IX Coordinator/Deputy Coordinator and/or their designee will offer to meet individually with the parties to answer any questions and explain the process as soon as possible after issuing the notice of hearing. In addition, as noted above, each party may choose to be accompanied by an advisor of their choice throughout the hearing and related meetings. Such an advisor may speak privately to their advisee, but such an advisor may not present evidence, question witnesses, or otherwise participate directly in the hearing or related meeting. This advisor does not represent a party at the hearing and does not have an active voice during the proceedings, but can provide advice during the hearing or during adjournments and breaks.
- **Statements** If either party wishes to call witnesses at the hearing, each must submit a list of witnesses with a brief statement as to the relevance of the testimony to the Title IX Coordinator/Deputy Coordinator and/or their designee up to 7 days prior to the hearing date.

- Witnesses may also request permission to provide their testimony over the phone or via written statement if compelling reasons preclude their attendance. The final approved witness list will be shared with the parties at least 2 days prior to the Grievance Hearing Panel. The Hearing Panel may call any witness it deems to have relevant information.
- The complainant or the accused may wish to present additional documentation or other evidence at the hearing that was not provided to the investigator(s). Within 3 days of receiving the Notice of Hearing, they must submit to the Title IX Coordinator/Deputy Coordinator the list of documents or other evidence. The list of documents must contain the following information:
  - ✓ Identification and description of the document or other evidence the party intends to present;
  - ✓ A summary of why the document or other evidence is relevant to making a decision on the complaint; and
  - ✓ The reason why the document or other evidence was not provided to the investigator(s).
- In general, in a case where the accused raises consent as a defense, any prior consensual relationship between the parties may be deemed relevant, but not necessarily determinative. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Generally, your prior sexual history or that of the accused will not be allowed. However, in limited circumstances, a prior finding of responsibility for a similar act of sexual misconduct that remains following any appeals may be deemed relevant and may be considered in making a determination as to responsibility and/or assigning of a sanction. Each party has the right to submit a written appeal to the Vice President of Student Success within 10 days of being notified of the Hearing Panel's decision.

## **The Appeal Process**

The appeal process has two steps. First, within 7 days of receiving the appeal, the Dean of Student Success, the Vice President of Academic and Student Success and/or their designee will determine whether the grounds for appeal have been satisfied and notify the parties. The party that did not initiate the appeal will then have 7 days to submit a written response.

Second, within 14 days of receiving this written response (or within 7 days of the deadline for a respondent to submit a written response if no such response is submitted), (a) the appeal will be reviewed by a three person panel ("the Appeal Panel") consisting of the Dean of the College and/or their designee and two members of the Grievance Board who did not participate in the initial hearing. The Appeal Panel will notify the both parties in writing of the outcome of the appeal.

The appeal panel can recommend a number of remedies, including remanding the case to the original hearing panel for reconsideration and convening an entirely new hearing panel. Appeal decisions by the Appeal Panel are final.

**Records Maintenance** The College will maintain documentation and records regarding alleged violations of the Policy and their resolution in a manner that protects the confidentiality of the parties involved, complies with the Family Educational Rights and Privacy Act (FERPA), and to the extent possible excludes personally identifiable information of victims of sexual and interpersonal violence, dating violence, and stalking.

The hearing audio-recording and evidence presented at the hearing will be maintained by the Title IX Coordinator. If a student has been found responsible for violating the Policy, this finding remains a part of that student's conduct record.

## Definitions

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

**Complainant:** A complainant refers to an individual who believes that they 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 the 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. Any employee with supervisory authority or has been designated by the Title IX Coordinator / Deputy Coordinator is a responsible employee.

**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 (e.g., due to the individual’s age or use of drugs or alcohol, or because an intellectual or disability prevents the individual from having the capacity to give consent). Sexual violence includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties.

**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.

**Retaliation**

Any form of retaliation, including intimidation, threats, harassment, and other adverse action taken or threatened against anyone who files a complaint, the accused individual, or any person cooperating in the investigation, to include testifying is strictly prohibited. Retaliation may result in disciplinary or other action independent of the sanctions or interim measures.

**Local Support Resources**

**People Incorporated**

<b>Lebanon.....</b>	<b>276.889.8477</b>
<b>Clintwood.....</b>	<b>276.928.5800</b>
<b>Grundy.....</b>	<b>276.935.5485</b>
<b>Family Crisis Services.....</b>	<b>276.988.5583</b>
<b>Cumberland Mountain Community Services.....</b>	<b>276.964.6702</b>
<b>Clinch Valley Community Action.....</b>	<b>276-988-5583</b>

## Other Resources

National Domestic Violence Hotline..... 1.800.799.7233  
National Sexual Assault Hotline.....1.800.656.4673  
National Dating Abuse Hotline.....1.866.331.9474



# KNOW YOUR RIGHTS

## Your rights include:

- The right to be informed of the outcome of your complaint through written means.
- Protections against retaliation.
- The right to access interim relief/accommodations.
- The right against the use of “mediation” or another informal means to resolve complaints.
- The right to have an advisor of your choice resent during the hearing.
- The ability to have investigator(s)/members of hearing boards removed if they are biased or have a relationship with the accused individual.
- Equal opportunity to present evidence and witnesses.
- Guarantee that no questions regarding irrelevant sexual history will be asked.
- The right to file a federal or criminal complaint at any time.
- Equal access to and notice about adjudication proceedings.
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- Protections against cross-examination by the accused individual.
- Protections against information about your case being shared with individuals not tasked with responding to violence.
- To expect that college investigations will conclude in about 60 days.
- Equal rights to appeal the decision made by the Hearing Panel.