

Procedure 5.3.4.1 Student Services: Sexual Harassment and Sexual Violence

**TRI-COUNTY
COMMUNITY COLLEGE**

**STUDENT SERVICES
SEXUAL HARASSMENT AND
SEXUAL VIOLENCE**

**PROCEDURE
5.3.4.1**

The College strives to make its campuses inclusive, safe and a welcoming learning environment for all members of the College community. Pursuant to multiple federal and state laws and administrative regulations and pursuant to College policy, the College prohibits discrimination in its activities, services and programs based on sex, sexual orientation, gender and gender identity.

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex or gender in any federally funded education program or activity. Under Title IX, discrimination on the basis of sex or gender also includes sexual harassment, stalking, dating and domestic violence, or sexual violence, such as rape, sexual assault, sexual battery, and/or sexual coercion. The College's Title IX Coordinator has oversight responsibility for handling Sexual Misconduct complaints and for identifying and addressing any patterns and/or systemic problems involving Sexual Misconduct. All allegations involving Sexual Misconduct should be directed to the College's Title IX Coordinator or, in the case of actions solely between employees, the College's Director of Human Resources. If the alleged incident involves both an employee and a student, the Title IX Coordinator shall take the lead but shall work cooperatively with the Director of Human Resources.

I. DEFINITIONS

The following definitions shall apply to this Procedure and shall be collectively referred to herein as "Sexual Misconduct".

The definitions are not intended to operate as speech codes, promote content and viewpoint discrimination or suppress minority viewpoints in the academic setting. Indeed, just because a student's speech or expression is deemed offensive by others does not mean it constitutes discrimination or harassment.

In applying these definitions, College administrators shall view the speech or expression in its context and totality and shall apply the following standard: the alleged victim subjectively views the conduct as discrimination or harassment and the conduct is objectively severe or pervasive enough that a reasonable person would agree that the conduct is discriminatory or harassing.

- A. Confidential Employee** – is not a Responsible Employee and is not required to report incidents of Sexual Misconduct to the College's Title IX Coordinator if confidentiality is requested by the student. Campus counselors are considered Confidential Employees. If a student is unsure of someone's duties and ability to maintain one's privacy, the student should ask the person before he/she speaks to him/her.

- B. Consent** – explicit approval to engage in sexual activity demonstrated by clear actions or words. This decision must be made freely and actively by all participants. Non-verbal communication, silence, passivity or lack of active resistance does not imply consent. In addition, previous participation in sexual activity does not indicate current consent to participate and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent has not been obtained in situations where the individual: i) is forced, pressured, manipulated or has reasonable fear that they will be injured if they do not submit to the act; ii) is incapable of giving consent or is prevented from resisting due to physical or mental incapacity (including being under the influence of drugs or alcohol); or iii) has a mental or physical disability which inhibits his/her ability to give consent to sexual activity.
- C. Dating Violence** – crimes of violence against a person with whom the person has or had a social relationship or a romantic or intimate relationship.
- D. Domestic Violence** – crimes of violence against a current or former spouse or intimate partner, a person with whom the student shares a child in common, a person with whom the student cohabitates or has cohabitated as a spouse, a person similarly situated to the student as a spouse, a person who is related to the student as a parent, child or person who is related to the student as a grandparent or grandchild.
- E. Rape** – as stipulated by the Federal Bureau of Investigation’s (FBI) updated definition in the UCR Summary Reporting System, means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- This definition includes any sex of victim or Perpetrator. Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.
- F. Responsible Employee** – a College employee who has the authority to take action to redress sexual harassment/misconduct; who has been given the duty of reporting incidents of sexual harassment/misconduct or any other misconduct by students to the Title IX Coordinator or other appropriate designee; or who a student reasonably believes has this authority or duty. The College’s Responsible Employees include all College administrators (Deans, Directors, Coordinators and Vice Presidents). If a student is unsure of someone’s duties and ability to maintain one’s privacy, the student should ask the person before he/she speaks to him/her.
- G. Sexual Assault** – subjecting any person to contact or behavior of a sexual nature for the purposes of sexual gratification without the person’s expressed and explicit consent.

- H. Sexual or Gender-Based Harassment** – unwelcome sexual advances, requests for sexual favors and other verbal, physical, or electronic conduct of a sexual nature that, from the perspective of a reasonable person, creates a hostile, intimidating, or abusive environment; involve verbal, physical, or electronic conduct based on a person’s sex, gender, or sex-stereotyping that, from the perspective of a reasonable person, creates a hostile, intimidating, or abusive environment, even if those acts do not involve conduct of a sexual nature; including harassment for displaying what is perceived as a stereotypical characteristic for one’s sex or for failing to conform to stereotypical notions of masculinity and femininity, regardless of the actual or perceived sex, gender, gender identity, or gender expression of the person(s) involved.
- I. Stalking** – engaging in a course of conduct directed to a specific person that would cause a reasonable person to fear for his/her safety or the safety of others or suffer substantial emotional distress by placing that person in fear of death, bodily injury or continued harassment.
- J. Standard of Evidence** – the College uses the preponderance of the evidence as the standard for proof of whether a violation occurred. In the student due process hearing and employee grievance process, legal terms like “guilt, “innocence” and “burden of proof” are not applicable. Student and employee due process hearings are conducted to take into account the totality of all evidence available from all relevant sources. The College will find the alleged Perpetrator either “responsible” or “not responsible” for violating these Procedures.

II. REPORTING

A. Reporting to Local Law Enforcement.

Individuals may report Sexual Misconduct directly to local law enforcement agencies by dialing 911. Individuals who make a criminal allegation may also choose to pursue College disciplinary action simultaneously. A criminal investigation into the matter does not release the College from its obligation to conduct its own investigation (nor is a criminal investigation determinative of whether Sexual Misconduct has occurred). However, the College’s investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, the College must take interim measures when necessary to protect the alleged Complainant and/or the College community.

Individuals may choose not to report alleged Sexual Misconduct to law enforcement authorities. The College respects and supports individuals’ decisions regarding reporting; nevertheless, the College may notify appropriate law enforcement authorities if required or warranted by the nature of the allegations.

B. Reporting to College Officials.

1. Students Complaints.

The College's Title IX Coordinator oversees compliance with these Procedures and Title IX regulations. Questions about these Procedures should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to Sexual Misconduct may do so by reporting the concern to the College's Title IX Coordinator.

The College's Title IX Coordinator is:

Connie Ivey
Director of Human Resources
Harper-Jarrett-Oglesby Building
21 Campus Circle
Murphy NC 28906
828-835-4325

For Sexual Misconduct incidents between students and employees, the Title IX Coordinator will work in partnership with the Director of Human Resources to investigate and resolve the allegations.

2. Employee Complaints.

All reports of Sexual Misconduct incidents solely between employees should be reported to the Director of Human Resources.

The College's Director of Human Resources is:

Connie Ivey
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Harper-Jarrett-Oglesby Building
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III. INITIAL INVESTIGATION

As these Procedures apply to both students and employees as either the Complainant or the Respondent, the administrator receiving the incident report will determine if the case should be handled by: 1) the Title IX Coordinator (student/student); 2) the Director of Human Resources (employee/employee); or 3) both (student/employee). For incidents involving students and employees, the College will utilize the process for both the student investigation and the employee investigation sections as applicable.

A. Student Investigation

1. Students filing complaints (“Complainants”) are urged to do so in writing as soon as possible but no later than thirty (30) days after disclosure or discovery of the facts giving rise to the complaint. Complaints submitted after the thirty (30) day period will still be investigated; however, Complainants should recognize that delays in reporting may significantly impair the ability of College officials to investigate and respond to such complaints. The Title IX Coordinator shall fully investigate any complaints and will, as needed, and if the complaint also involves an employee, collaborate with the College’s Director of Human Resources. During the course of the investigation, the Title IX Coordinator may consult with other relevant College administrators and the College Attorney.
2. During the investigation, the Title IX Coordinator shall meet with the Complainant and the alleged Perpetrator (“Respondent”) separately and give each party an equal opportunity to provide evidence, including informing the Title IX Coordinator of any potential witnesses. Both parties will be given access to any information provided by the other in accordance with any federal or state confidentiality laws.
3. During the investigation process, the Title IX Coordinator may implement temporary measures in order to facilitate an efficient and thorough investigation process as well as to protect the rights of all parties involved. The temporary actions include, but are not limited to: reassignment of class schedules; temporary suspension from campus (but be allowed to complete coursework); or the directives that include no contact between the involved parties.
4. A confidential file regarding the complaint shall be maintained by the Title IX Coordinator. To the extent possible, the College will keep all information relating to the complaint and investigations confidential; however, to maintain compliance with the Clery Act, both parties will be informed of the outcome of any institutional proceedings under these Procedures.
5. The Title IX Coordinator shall make every effort to conclude the investigation as soon as possible but no later than thirty (30) calendar days. If the nature of the investigation requires additional time, the Title IX Coordinator may have an additional ten (10) calendar days to complete the investigation. The Title IX Coordinator shall notify the parties of this extension.
6. Upon making the complaint, Complainants will be immediately notified that they have the right to seek additional assistance from law enforcement and have the right to seek, among other things, judicial no-contact, restraining and protective orders. Complainants will also be notified of available counseling services and their options of changing academic situations and other interim protective measures.

B. Employee Investigations

1. Employees filing complaints (“Complainants”) are urged to do so in writing as soon as possible but no later than thirty (30) days after disclosure or discovery of the facts giving rise to the complaint. Complaints submitted after the thirty (30) day period will still be investigated; however, Complainants should recognize that delays in reporting may significantly impair the ability of College officials to investigate and respond to such complaints. The Director of Human Resources shall fully investigate any complaints. During the course of the investigation, the Director of Human Resources may consult with other relevant College administrators and the College Attorney.
2. During the investigation, the Director of Human Resources shall meet with the Complainant and the alleged Perpetrator (“Respondent”) separately and give each party an equal opportunity to provide evidence, including informing the Director of Human Resources of any potential witnesses. Both parties will be given access to any information provided by the other in accordance with any federal or state confidentiality laws.
3. During the investigation process, the Director of Human Resources may implement temporary measures in order to facilitate an efficient and thorough investigation process as well as to protect the rights of all parties involved. The Director of Human Resources may suspend an employee with pay pending an investigation if such action is in the College’s best interest.
4. A confidential file regarding the complaint shall be maintained by the Director of Human Resources. To the extent possible, the College will keep all information relating to the complaint and investigations confidential; however, to maintain compliance with the Clery Act, both parties will be informed of the outcome of any institutional proceedings under these Procedures.
5. The Director of Human Resources shall make every effort to conclude the investigation as soon as possible but no later than thirty (30) calendar days. If the nature of the investigation requires additional time, the Director of Human Resources may have an additional ten (10) calendar days to complete the investigation and shall notify the parties of this extension.
6. Upon making the complaint, Complainants will be immediately notified that they have the right to seek additional assistance from law enforcement and have the right to seek, among other things, judicial no-contact, restraining and protective orders. Complainants will also be notified of available counseling services and other interim protective measures.

IV. RECOMMENDATION AND APPEAL

A. Students

1. After the investigation is complete, the Title IX Coordinator will put forward a recommendation of finding, based on the Standard of Evidence, and sanctions, if

warranted. If the recommendation is accepted by both parties involved, the recommendation and sanction(s) will become effective. The Title IX Coordinator will submit to each party a final outcome letter that will include, but not limited to, the following:

- a. Determination if the Respondent is responsible or not responsible for violating these Procedures.
 - b. Sanction(s), if appropriate.
 - c. Whether monitoring of academic schedules is needed between the parties to ensure that the individuals involved are not in classes together (the Title IX Coordinator will assist in this process).
 - d. Short-term College counseling services available to each party.
2. If the Title IX Coordinator's recommendations are not accepted by either the Complainant or the Respondent, both may appeal and request a formal hearing. If the Title IX Coordinator recommends sanctions that he/she cannot impose (i.e., expulsion), the matter shall automatically be set for a hearing. The President will preside over the hearing as the Presiding Officer. The process for the hearing is outlined below:
- a. Prior to the hearing, the Complainant and the Respondent have the right to review all evidence, including written statements by the Respondent, the Complainant, or witnesses. Strict rules of evidence do not apply. The Standard of Evidence shall apply for the hearing.
 - b. Written notice including the date, time, and location of the hearing will be sent to all parties.
 - c. At the hearing, all pertinent parties have a right to speak and be questioned by the Presiding Officer. Cross-examination between parties is not permitted. The College will provide options for questioning without confrontation. Each phase of the hearing will be heard by both parties in separate rooms by use of a speaker phone.
 - d. The Complainant and the Respondent are allowed to be accompanied by an advocate. The advocate may not present on behalf of either party unless otherwise instructed to do so by the Presiding Officer. If the Complainant or the Respondent chooses to have an advocate who is an attorney, notification must be provided to the Presiding Officer at least three (3) College business days prior to the hearing date. In this case, the College Attorney will also be present.
 - e. Both parties have a right to a written notice of the hearing outcome.

B. Employees

1. After the investigation is complete, the Director of Human Resources will put forward a recommendation of finding, based on the Standard of Evidence, and sanctions, if warranted. If the recommendation is accepted by both parties involved, the recommendation and sanctions will become effective. A final outcome letter will be submitted to the Complainant and Respondent that may include, but not limited to, the following:
 - a. Determination if the Respondent is responsible, not responsible, or if the decision is deemed inconclusive, or shared responsibility.
 - b. Sanctions, if appropriate.
 - c. Monitoring of academic schedules or workplace schedule if needed.
 - d. Short-term counseling services will be offered to each party.
2. If the Director of Human Resources' recommendations are not accepted by either the Complainant or the Respondent, both may appeal and request a formal hearing. If the Director of Human Resources recommends sanctions that he/she cannot impose (i.e., termination) the matter will automatically be set for a hearing. The President will preside over the hearing as the Presiding Officer. The process for the hearing is outlined below:
 - a. Prior to the hearing, the Complainant and the Respondent have the right to review all evidence, including written statements by the Respondent, the Complainant, or witnesses. Strict rules of evidence do not apply. The Standard of Evidence shall apply for the hearing.
 - b. Written notice including the date, time, and location of the hearing will be sent to all parties.
 - c. At the hearing, all pertinent parties have a right to speak and be questioned by the Presiding Officer. Cross-examination between parties is not permitted. The College will provide options for questioning without confrontation. Each phase of the hearing will be heard by both parties in separate rooms by use of a speaker phone.
 - d. The Complainant and the Respondent are allowed to be accompanied by an advocate. The advocate may not present on behalf of either party unless otherwise instructed to do so by the Presiding Officer. If the Complainant or the Respondent chooses to have an advocate who is an attorney, notification must be provided to the Presiding Officer at least three (3) College business days prior to the hearing date. In this case, the College Attorney will also be present.
 - e. Both parties have a right to a written notice of the hearing outcome.

C. Sanctioning.

The following sanctions may be imposed for those who have violated these Procedures.

1. Students
 - a. Verbal or Written Warning
 - b. Probation
 - c. Administrative withdrawal from a course without refund
 - d. Required Counseling
 - e. No Contact Directive
 - f. Suspension
 - g. Expulsion (President must impose)
 - h. Other consequences deemed appropriate
2. Employees
 - a. Verbal or Written Warning
 - b. Performance Improvement Plan
 - c. Required Counseling
 - d. Required Training or Education
 - e. Demotion (President must impose)
 - f. Suspension with or without Pay (President must impose)
 - g. Termination (President must impose)
 - h. Other consequences deemed appropriate to the specific violation

V. PROTECTION AGAINST RETALIATION

The College will not in any way retaliate against an individual who makes a report of Sexual Misconduct in good faith or who assists in an investigation. Retaliation includes, but is not limited to: any form of intimidation, disciplinary action, reprisal or harassment. Retaliation is a serious violation and should be reported immediately. The College will take appropriate action against any employee or student found to have retaliated against another in violation of these procedures.

VI. PROVIDING FALSE INFORMATION

Any individual who knowingly files a false report or complaint, who knowingly provides false information to College officials or who intentionally misleads College officials involved in the investigation or resolution of a complaint may be subject to disciplinary action including, but not limited to expulsion or employment termination. The College recognizes that an allegation made

in good faith will not be considered false when the evidence does not confirm the allegation(s) of Sexual Misconduct.

VII. LIMITED IMMUNITY

The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of various policy violations. It is in the best interest of this College that as many Complainants as possible choose to report to College officials and that witnesses come forward to share what they know. To encourage reporting, the College offers Sexual Misconduct Complainants and witnesses amnesty from minor policy violations.

VIII. EMPLOYEE AND STUDENT RELATIONSHIPS

Romantic or sexual relationships between College employees and students are prohibited if the employee and the student have an academic relationship. Academic relationships include any activities in which the employee is a direct or indirect supervisor or instructor for the student, as in a classroom or lab, or is a sponsor for any College activity involving the student, including work study or organizational/club/sport activities. This prohibition shall continue until the student or the employee is no longer affiliated with the College. Employees engaging in inappropriate relationships will be subject to disciplinary action up to and including termination of employment. Students engaging in inappropriate relationships may be subject to disciplinary action up to and including expulsion.

Romantic or sexual relationships between College employees and students not in an academic relationship that impairs the College employee's effectiveness, disrupts the workplace/learning environment, and/or impairs the public confidence in the College will be subject to disciplinary action up to and including termination of employment or expulsion from the College.

IX. SUSPENDING PROCEDURES

In cases of emergency or serious misconduct, the College reserves the right to suspend this process and may enact appropriate action for the welfare and safety of the College community.

X. STUDENT AND EMPLOYEE EDUCATION AND ANNUAL TRAINING

All new students and all employees shall be required to participate in a primary prevention and awareness program that promotes awareness of Sexual Misconduct. This program will be held annually at the beginning of each fall semester.

At this annual training, students and employees must receive training in the following areas:

- A. Information about safe and positive options for bystander intervention skills;

- B. What “consent” means with reference to sexual activities;
- C. Risk reduction programs so students recognize and can avoid abusive behaviors or potential attacks;
- D. How and to whom to report an incident regarding discrimination, harassment and sexual based violence;
- E. The importance of preserving physical evidence in a sexual-based violent crime; and
- F. Options about the involvement of law enforcement and campus authorities, including the alleged victim’s option to: i) notify law enforcement; ii) being assisted by campus authorities in notifying law enforcement; iii) declining to notify law enforcement; and iv) obtaining “no-contact” or restraining orders.

Each year, all students and employees will receive an electronic copy of these Procedures sent to their College email address of record. These Procedures will be maintained online in the College’s website and a hard copy will be kept on file (in English and Spanish) in the Title IX Coordinator’s office and the Director of Human Resources’ office. Other translations will be made available upon request.

Adopted: 5/24/18 BOT