

**Sexual Misconduct Policy (Title IX Policy)**  
**On Gender-based Discrimination, Sexual Harassment, Sexual Violence,**  
**Domestic Violence, Dating Violence, and Stalking (Rev. 8/2018)**

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# **Sexual Misconduct Policy (Title IX Policy)**

## **On Gender-based Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking (Rev. 8/2018)**

### **A. Notice of Nondiscrimination**

As a recipient of federal funds, Northern Virginia Community College (the College or NOVA), 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. Sex discrimination and sexual harassment also violate Title VII of the Civil Rights Act of 1964 (which includes employees). 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 Melanie Barr-Brooks, J.D. and the Deputy Title IX Coordinator is Dr. Marleen McCabe. Their office is located at 4001 Wakefield Chapel Road, Annandale, Virginia; they may be contacted by phone at 703-323-2262 or via email at [titleix@nvcc.edu](mailto:titleix@nvcc.edu).

### **B. Policy**

NOVA 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, gender identity, sexual orientation, age (except when age is a bona fide occupational qualification), disability, national origin, genetic information 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.

### **C. 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.

### **D. 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.

## E. Definitions

**Advisor:** An individual chosen by the complainant or respondent to provide support, guidance, or advice. Advisors may be present at any meeting. Advisors cannot speak on behalf of the advisee but they can consult with them. It is recommended that the same, single advisor be maintained throughout the sexual misconduct administrative process. This use of a single, consistent advisor enables the process to move forward in an efficient manner. During meetings, the advisor may talk quietly with the student/faculty/staff or pass notes in a nondisruptive manner. The advisor may not intervene in a meeting and may not address the investigators, provide evidence, question witnesses or make objections. If an advisor fails to abide by such guidelines, he/she may be prohibited from attending ongoing or future meetings.

To avoid a conflict of interest, College employees must ensure that they have no other role or job responsibilities in the Title IX Resolution process.

**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 (iii) that is owned by the College but controlled by another person, is frequently used by students, and supports institutional purposes, such as a food or other retail vendor.

**Complainant:** An individual who makes a complaint or alleges that a violation of this Policy has occurred and files a complaint or has a complaint filed by a reporting party, against a faculty member, staff member or student.

**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. 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. 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.

*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 also 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 bodily injury, sexual assault, or death 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 bodily injury, sexual assault, or death 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 complainant shares a child in common, or who is cohabitating with or has cohabitated with the person as a spouse or intimate partner.

**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.

**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.

**Respondent:** A person against whom a complaint is brought, or who is alleged to have committed a violation of this Policy.

**Respondent Navigator:** A NOVA representative who assists respondents, at their request, in navigating the action steps connected with the administrative process, including interim measures. Each campus and Human Resources has at least one Respondent Navigator. Respondent Navigators are designated by the Title IX Coordinator and receive annual training.

**Responsible Employee:** A responsible employee is one designated for purposes of initiating notice *of a possible violation of the Policy*. A responsible employee also is any employee whom 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 or Deputy Title IX Coordinator. At the College responsible employees include Administrative Council members, Associate Vice Presidents, Deans and Associate/Assistant Deans, Directors, designated Human Resources staff, full-time teaching faculty, business managers, financial aid managers, counselors, coaches, student life staff, and club advisors.

A responsible employee shall not be an employee who, in their position at the College, provides services to the campus community as a licensed health care professional (or as administrative staff of a licensed health care professional), victim support personnel, clergy, or attorney.

**Reporting Party:** A reporting party is a third party, other than the complainant or respondent, who makes a report concerning a Title IX matter. A reporting party makes a complaint or alleges that a violation of this Policy has occurred to another person, other than themselves.

**Review Committee:** Review committee refers to the NOVA's *Sexual Assault Review, Response, and Resources Team* (SARRRT). The SARRRT includes the Title IX Coordinator, the NOVA Chief of Police, the Associate Vice President for Student Services and Enrollment Management, the Associate Vice President for Human Resources, and the NOVACares Director. The Associate System Counsel and Assistant Attorney General assigned to NOVA serves as an advisor. The committee is responsible for reviewing information related to acts of sexual violence and supporting other Title IX activities.

**Sexual Assault:** Sexual assault is defined as the intentional physical 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, the complainant'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 assault may also include inanimate and animate object sexual penetration.

**Sex Discrimination:** Sex discrimination is the unlawful treatment of another based on the individual's sex that excludes an individual from participation in, separates, denies the individual the benefits of, or otherwise adversely affects a term or condition of an individual's employment, education, or participation in a college program or activity.

**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: Hostile Environment and *Quid Pro Quo* (see above).

**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, sexual violence, domestic violence and dating 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 two or more occasions, 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 bodily injury, criminal sexual assault, or death to that other person or to that other person's family or household member. Sex/gender-based stalking is a violation of this policy.

**Third Party:** A third party is any person who is not a student or employee of the College.

**Witness:** Individual who may have information relevant to a report of sexual misconduct.

- Participation in the College's Title IX resolution process/investigation is voluntary.
- Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, skype (or similar technology), if they cannot be interviewed in person. Witnesses who elect not to participate or elect not to cooperate with the investigation will not be permitted to offer evidence at a later stage in the Title IX Resolution Process. Failure of witnesses to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

## F. Retaliation

1. 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 assessment 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. Both the reporting party and the respondent as well as College administrators have the right to be free from retaliation before, during, and after an inquiry or investigation into alleged misconduct.

2. 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.

## **G. Reporting Incidents**

1. Members of the campus community who believe they have been subjected to or have witnessed sexual violence are encouraged to immediately report the incident to NOVA or local police. All emergencies or any incident where someone is in imminent danger should be reported immediately to campus police/security or local police by dialing 911 or 703-764-5000. To email NOVA police please contact: [PoliceDispatch@nvcc.edu](mailto:PoliceDispatch@nvcc.edu).
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 Coordinator 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 report Title IX related complaints via email at [titleix@nvcc.edu](mailto:titleix@nvcc.edu).

Although strongly encouraged, a complainant is not required to submit a complaint in writing.

### **Northern Virginia Community College Title IX Sexual Misconduct Campus Resources:**

Title IX Coordinator: Melanie Barr-Brooks, J.D.

Title IX Deputy Coordinator: Marleen McCabe, Ph.D.

Office of Fair Practices, Title IX

Phone: 703.323.2262

Email: [titleix@nvcc.edu](mailto:titleix@nvcc.edu)

After normal business hours, members of the campus community should report alleged violations of this policy to the police or leave a voicemail at 703.323.2262 or send an email to [titleix@nvcc.edu](mailto:titleix@nvcc.edu).

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.

## **H. Handling of Reports and Investigations**

1. The Title IX Coordinator/Deputy will assist members of the campus community in reporting incidents to law enforcement authorities upon request. The Title IX Coordinator/Deputy will request the consent of the complainant (or alleged victim if different from the complainant), to

report personally identifiable 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/Deputy 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.

2. The College may suspend the fact-finding portion of a Title IX Assessment while the campus police or the local law enforcement agency gathers evidence. The College will resume its Title IX assessment as soon as the campus police or local law enforcement agency has completed gathering evidence. Otherwise, the College's assessment 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.

## **I. 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 remedy 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 on a "need-to-know" basis pursuant to this Policy.
2. Responsible employees must report all alleged violations of this Policy to the Title IX Coordinator/Deputy 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). 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 they report the alleged conduct to someone with a duty to maintain confidentiality, e.g., NOVA Sexual Assault Services (SAS). Employees may contact SAS or the Employee Assistance Program if eligible.

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/Deputy may conduct a preliminary assessment 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 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 assessment 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. There is a need to consider the concerns of a complainant in light of the broader campus safety for others, including the complainant.

4. Additionally, upon receiving a report of an alleged act of sexual violence against a student/faculty/staff or one that allegedly occurred on or off campus, the Title IX Coordinator or designee shall convene the College's review committee (SARRRT). The review committee will convene 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, and any other facts and circumstances, including personally identifiable information, related to the alleged incident known to the review committee. The review committee may try to reach a consensus but it is the law enforcement representative of the review committee who ultimately determines whether the disclosure of the information, including the personally identifiable information, is necessary to protect the health or safety of the complainant or alleged victim or other individuals. The College will disclose such information to the law enforcement agency that would be responsible for investigating the alleged incident immediately. The Title IX Coordinator or designee will notify the complainant or 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 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 I(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 review team meeting shall disclose the information to the local Commonwealth's Attorney, including personally identifiable information, if such information was disclosed pursuant to Paragraph I(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.

In addition, law enforcement will notify the local Commonwealth's Attorney within 48 hours of beginning an investigation involving a felony sexual assault.

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 assessment. 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.

## **J. Amnesty**

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 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.

### **K. Timely Warnings**

The College is required by federal law to issue timely warnings for reported incidents that pose a serious and continuing threat to members of the campus community. For Title IX purposes, the College will ensure, to every extent possible, that a complainant'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.

### **L. Interim Measures**

1. Prior to the resolution of a complaint, the College may suspend or place the respondent on disciplinary or administrative leave or suspension, 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 action(s) necessary and reasonable. Individuals subject to proposed interim actions shall have the opportunity to show within 2 working days of notice why such action 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 actions for either the complainant or the respondent if requested, appropriate, and reasonably available, whether a formal complaint has been filed or whether an assessment by either campus administrators or law enforcement agencies has commenced. Such actions 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.

When such accommodations are provided, the College will protect the privacy of the complainant or the respondent to the extent possible while still providing the accommodation.

### **M. Sexual and Domestic Violence Procedures**

Anyone who has experienced sexual violence, domestic violence, dating violence, or stalking is encouraged to do the following:

- Safely find a place away from harm.
- Call 911 or if on campus, contact campus police/security.

- Call a friend, 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. When a matter is reported to the police, the police will be able to order this without cost to the complainant.
- 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. Other similar resources include:
  - NOVA - Sexual Assault Services (SAS) – [nova.sas@nvcc.edu](mailto:nova.sas@nvcc.edu) or 703.338.0834
  - Alexandria - Sexual Assault Center – 703.683.7273
  - Fairfax County - Domestic and Sexual Violence Services – 703.360.7273
  - Prince William County - Sexual Assault Victims’ Advocacy Services – 703.368.4141
  - Loudoun County - Abused Women’s Shelter – 703.777.6652
- 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. If the police are notified, they may be able to provide you with some further assistance. Prior to going to a medical facility/Emergency Room you are also encouraged to:
  - Not wash your hands, bathe, or douche. Do not urinate, if possible.
  - 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, to preserve as evidence.
  - Not destroy any physical evidence that may be found in the vicinity of the incident by cleaning or straightening the location of the crime until law enforcement officials have had an opportunity to collect evidence.
  - Tell someone all the details you remember and 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.

## **N. Written Notification of Rights and Options**

Complainants 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:

1. the available law-enforcement options for investigation and prosecution;
2. the importance of collection and preservation of evidence;
3. the available options for a protective order;
4. the available options for investigation, resolution and adjudication under the College’s policies;
5. the complainant’s rights to participate or decline to participate in any investigation to the extent permitted under state or federal law;
6. the applicable federal or state confidentiality provisions that govern information provided by a complainant;
7. information on contacting available College resources, such as NOVA Sexual Assault Services (SAS), and community resources, including the 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;
8. the importance of seeking appropriate medical attention; and
  9. options related to changes in academic, parking, and working arrangements, when requested and when reasonably available.

The Complainants' Rights are available from police, Sexual Assault Services, Title IX, or the Title IX website at <http://www.nvcc.edu/titleix/index.html>

The Respondents' Rights are available from the Title IX Office, or the Title IX website at: <https://www.nvcc.edu/titleix/index.html>

## **O. Support Services**

1. Information will be made available to all students and employees about counseling, mental health, victim advocacy, legal assistance, and other community resources e.g hospitals, domestic violence and services available in the community and on campus.
2. For more information about available college and community resources, go to: <https://www.nvcc.edu/police/college-safety/sexual-assault.html>, <http://www.nvcc.edu/novacares/>, and <http://www.nvcc.edu/titleix/index.html>.

## **P. Education and Awareness**

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. To fulfill requirements for mandatory training, students and employees are offered a variety of primary prevention and awareness programs. The program, at a minimum, shall include:
  - 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
  - Information 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.

4. Title IX Coordinator(s) and investigators must receive annual training on sexual violence, domestic violence, dating violence, and stalking, and the conduct of investigations.

## **Q. Resolution of Complaints**

1. The College has an obligation to provide a prompt, fair, and impartial investigation and resolution of alleged violations to this Policy and is committed to doing so.
2. The College may resolve complaints either by an informal or formal resolution process.
3. The parties may agree to proceed under the informal resolution process in matters *not* involving sexual violence, domestic violence, dating violence, or sex/gender based 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.
4. Any individual with a documented disability may request accommodations at every stage of the resolution process. Such requests should be submitted to the Title IX Coordinator or designee at least 3 business days before the time of their scheduled meeting.

## **R. Informal Resolution Process**

1. After receiving agreement from both parties to resolve the complaint through the informal resolution process, the Title IX Coordinator will appoint a college official to facilitate an effective and appropriate resolution. Within 3 business days of the official's appointment, the complainant or the respondent may notify the Title IX Coordinator in writing of any potential conflict of interest posed by assigning such official to the matter. In turn, if the college official believes the appointment poses a conflict of interest, the official will notify the Title IX Coordinator within 3 business days of the appointment. Based on the statements received, the Title IX Coordinator will determine if a material conflict of interest exists and will assign a different individual to facilitate the informal resolution process as appropriate.

Within 3 business days of the uncontested college official's appointment, the college official will request a written statement from the parties to be submitted within 5 business days. Each party may request that witnesses are interviewed. Within 5 business days of receiving the written statements, the college official will meet with the parties separately 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.

2. The informal resolution process should be completed within 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.

## **S. Formal Resolution Process**

The formal resolution process will be applied (1) when any party to the complaint requests a formal resolution and (2) to all matters that are not eligible for informal resolution, e.g. sexual violence, dating violence, and stalking within the context of gender-based sexual misconduct, if assessed as severe.

### **1. Complainant's Initial Meeting with the Title IX Coordinator or Deputy.**

As soon as is practicable, the Title IX Coordinator/Deputy will contact the complainant to schedule an initial meeting. During this initial conversation, the Title IX Coordinator/ Deputy will:

- a. Provide the complainant a copy of this Policy or send it via email;
- b. Provide a written explanation of the complainant's rights and options for possible interim measures in, among others, academic schedules or work arrangements;
- c. Explain avenues for resolution of the complaint;
- d. Explain the steps involved in the complaint resolution process;
- e. Discuss confidentiality standards and concerns with the complainant;
- f. Determine whether the complainant wishes to pursue a resolution through the College, through law enforcement, or no resolution of any kind;
- g. Refer the complainant to campus and community resources, as appropriate;
- h. Discuss with the complainant, as appropriate, possible interim actions that may be taken or provided during the assessment and complaint resolution process;
- i. Discuss the complainant's right to due process and a prompt, fair and impartial resolution of the complaint;
- j. 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;
- k. Discuss the non-retaliation requirements.

### **2. Respondent's Initial Meeting with the Title IX Coordinator or Deputy.**

As soon as is practicable, the Title IX Coordinator/Deputy will schedule an initial meeting with the respondent. The respondent may be accompanied by an advisor of his or her choosing. During the initial conversation with the respondent, the Title IX Coordinator/Deputy 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 or send it via email;
- c. Provide a written explanation of the respondent's rights and options related to changes or accommodations in academic schedules, or work arrangements;
- d. Explain the College's procedures for resolution of the complaint;

- e. Explain the steps involved in the complaint resolution process;
- f. Discuss confidentiality standards and concerns with the respondent;
- g. Inform the respondent of any interim actions that may be imposed;
- h. Refer the respondent to campus and community resources, as appropriate, including the availability of a respondent navigator;
- i. Discuss with the respondent, as appropriate, possible interim actions that can be provided to the respondent during the the assessment and complaint resolution process;
- j. Discuss the respondent's right to due process and a prompt, fair and impartial resolution of the complaint;
- k. If the respondent is a student and the complaint involves an alleged act of sexual violence, explain to the respondent:
  - The College will include a notation on the academic transcript if the respondent is suspended or dismissed after being found responsible, or
  - The College, if the respondent withdraws from classes while under investigation, may continue the investigation in the respondent's absence. If possible, the respondent will be notified of the charges, provided an opportunity to respond to all the evidence, and be notified of the final resolution; and
- l. Discuss the non-retaliation requirements.

### **3. Title IX Coordinator's/Deputy Title IX Coordinator's Initial Determination**

- a) The College shall conduct an assessment of the complaint unless:
  - i. the complainant does not want the College to pursue the complaint and the Title IX Coordinator/Deputy has determined that the College can honor the request; and
  - ii. it is clear on its face and based on the initial meetings with the parties that no reasonable grounds exist for believing the conduct at issue constitutes a violation of this Policy.
- b. The Title IX Coordinator will consider the following factors in determining whether it is reasonable to conduct an assessment of the complaint:
  - i. the source and nature of the information;
  - ii. the seriousness of the alleged incident;
  - iii. the specificity of the information;
  - iv. the objectivity and credibility of the source of the information; and
  - v. whether the individuals allegedly subjected to the conduct can be identified.
- c. In the event that the Title IX Coordinator determines that an assessment of the complaint should not be conducted, s/he 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 or delegate may refer the matter to Dean of Students or the Conduct Officer for further consideration under the Student Code of Conduct. The Title IX Coordinator shall provide specific and clear written reason(s) why an assessment should not be conducted. The Title IX Coordinator shall provide the determination that the College will not assess the matter to the complainant and the respondent, concurrently, within 5 business days of the completion of the initial meetings. This decision is final.

#### 4. Appointment of the Investigator(s) and Conducting the Investigation

- a. 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.
- b. If the Title IX Coordinator determines an investigation should be conducted, he will appoint an investigator(s) within 5 business days of the completion of the initial meetings in most cases. The Title IX Coordinator will share the name(s) of the investigator(s) as well as their contact

information with both the complainant and respondent and will forward the complaint to the investigator(s).

- i. Within 3 business days of such appointment, the investigator, the complainant or the respondent may notify the Title IX Coordinator in writing any potential conflict of interest posed by assigning such investigator to the matter.
  - ii. If it is determined that a material conflict of interest exists, the Title IX Coordinator will consider such statements and assign a different individual as investigator.
- c. The investigator(s) will contact the complainant and respondent promptly. In most cases, this should occur within 5 business days from the date of the investigator's appointment.
  - i. 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.
  - ii. Each party may have one advisor present during any meeting with the investigator(s); however, the advisor may not speak on the party's behalf. Please refer to Definition section of this policy for clarification on the role of the advisor during the administrative process (see section E. Definitions).
- d. While conducting the investigation, the investigator(s) should weigh the credibility and demeanor of the complainant, respondent, and witnesses; the logic and consistency of the evidence; motives; and any corroborating evidence. When applicable the investigator(s) may consider whether the complainant's account is impacted by trauma.
- f. The investigator(s) will complete a written 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 report shall include at minimum, the following:
  - 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 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;
  - If applicable: the date on which the College deferred its process because the complainant filed a law enforcement complaint and the date on which the College resumed its process;
  - A rationale for any credibility determinations.
- g. The investigator(s) will forward the written report to the Title IX Coordinator/Deputy.
- Both the complainant and the respondent will be given 5 business days to review and comment on the written investigative report. Each party will be contacted by the Title IX Deputy Coordinator or designee to schedule a review time. The final written report and the parties' responses thereto shall be part of the record.
  - If the complainant and/or the respondent withdraws from classes while under investigation for an alleged violation of this Policy involving an act of sexual violence, in most cases, a withdrawal should not end the College's investigation and resolution of the complaint. The College shall continue the investigation, if possible, 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.
  - If the respondent withdraws from classes while under investigation for an act of sexual violence, the College shall place a notation on the respondent's academic transcript that states, "Withdrew from classes while under investigation for a violation of Northern Virginia 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 from classes while under investigation and subsequently found responsible for a violation of Northern Virginia Community College sexual misconduct policy."
  - The College may end the investigation and resolution of the complaint if the College cannot locate the respondent and provide them with notice and the opportunity to respond. In such cases, the College shall maintain the withdrawal notation on the student's academic transcript. Upon a final determination, the Title IX Coordinator immediately shall notify the College registrar and direct that the appropriate notation is made.

## **T. Determination by Title IX Coordinator**

1. When the complainant and respondent have reviewed the report and the Deputy Title IX Coordinator has received any additional responses to be included in the record, the report will be submitted to the Title IX Coordinator who will determine, on a case-by-case basis, 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 10 business days of receiving the written report from the investigator(s). 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 investigation will be closed. The Title IX Coordinator will make the determination in writing and distribute the written investigative report and the 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. The Title IX Coordinator will inform the complainant and the respondent of the right to appeal the decision and provide information on the appeal process (see section V. Right to Appeal).
3. Over the course of the Title IX resolution process findings may indicate alleged violations of the Student Code of Conduct and, for faculty, staff, vendors, contractors or visitors, violations of VCCS Policy, Department of Human Resource Management policy, or NOVA policies and procedures. For students, student conduct violations will be adjudicated and sanctioned as part of the Title IX process. For faculty and staff, the Title IX Coordinator will notify the immediate supervisor and the AVP for Human Resources of the potential policy violations for further action.
4. If the Title IX Coordinator finds that the evidence proves by a preponderance of the evidence standard that the **respondent violated the Sexual Misconduct Policy**, the Title IX Coordinator will make the determination in writing and distribute it, along with the written investigative report, to the complainant and the respondent concurrently. The Title IX Coordinator will also advise the complainant and the respondent of the right to appeal the decision and provide information on the appeal process. All parties to whom the written decision is distributed pursuant to this Policy should maintain it in confidence.
  - a. **If the respondent is a student**, the Title IX Coordinator will forward the report within 7 business days of the finding of responsibility to a panel of three Deans of Students appointed at the discretion of the Title IX Coordinator, to determine appropriate sanction(s). Within 7 business days, the panel shall submit a written determination of the sanctions to the Title IX Coordinator, who will inform the respondent of the sanction(s).

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 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.

- b. **If the respondent is an employee**, the Title IX Coordinator will forward the report to the employee’s dean or director-level supervisor. Within 10 business days, the supervisor or the appropriate Administrative Council Member shall determine and impose sanctions in accordance with VCCS or DHRM policy. The respondent and the Title IX Coordinator shall receive written notification of sanction(s).
  - c. If the respondent is a **third party affiliated with the College**, the Title IX Coordinator will forward the report to the Executive Vice President or NOVA Chief of Police, as appropriate. Within 10 business days, the EVP or Chief of Police shall determine and impose appropriate sanctions, as described below. The respondent and the Title IX Coordinator shall receive

- d. written notification of sanction(s). The Title IX Coordinator may disclose to the complainant information as described above.
- e. If the respondent is a **third party not affiliated with the College**, the Title IX Coordinator will forward the report to the NOVA Chief of Police. The Chief of Police or designee will be consulted for possible safety measures deemed to be appropriate under the circumstances. The Title IX Coordinator may disclose this information to the complainant.

## U. Sanctions and Corrective Actions

1. 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.
2. 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; verbal or written 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 Northern Virginia Community College's Title IX 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 purposes of this section following the 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 College registrar to remove the notation from the student's academic transcript.
  - b. If a student withdraws from classes while under investigation involving an act of sexual violence under this Policy, the student's academic transcript shall be noted as follows: "Withdrew from classes while under investigation for a violation of Northern Virginia Community College's Title IX Policy." Students are strongly encouraged not to withdraw from the College.
  - c. The College shall immediately remove the notation from the student's academic transcript upon a subsequent finding that the student is not responsible for an offense of sexual violence under this Policy. Upon such a finding, the Title IX Coordinator (or designee) shall direct the College 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.
3. **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.

4. **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.
5. The Title IX Coordinator will determine the final accommodations to be provided to the complainant, if any. All accommodations are to be coordinated through the Title IX Coordinator.
6. 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 another individual or the campus community, generally. Sanctions will continue in effect until such time as the appeal process is exhausted in such cases.
7. Apart from any other findings, the Title IX Coordinator may identify the necessity for corrective actions by the College to prevent recurring or similar incidents. The Coordinator shall communicate the corrective actions in writing to the appropriate College officials.

## V. Right to Appeal

1. The Title IX Coordinator will advise the respondent and complainant of their right to appeal any finding or sanction and the appeal process as part of the written notification.
2. If a party disagrees with the finding or the sanction(s), they may initiate an appeal. The party initiating an appeal must show error, as the original finding and sanction are presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:
  - A procedural error occurred that significantly impacted the outcome or fundamental fairness of the process.
  - To consider new evidence, unavailable at the time of the investigation that could substantially impact the investigator(s)' finding. This does not include statements from a Complainant or Respondent who chose not to participate in the investigation. Witnesses who elect not to participate or elect not to cooperate with the investigation will not be permitted to offer evidence at a later stage in the Title IX Resolution Process. Failure of witnesses to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence. Deference is given to the original decision. The appeal should explain why the evidence was unavailable previously and why such evidence may substantially impact the investigator(s)' finding.
  - The sanction(s) are not justified by the evidence and/or mitigating factors warrant a lesser sanction or aggravating factors warrant a greater sanction(s).

**Students** must submit their appeal in writing within 10 business days of receiving the written notice of the decision to the Executive Vice President. All information pertaining to the appeal needs to be submitted prior to the deadline. Appeals submitted by email must be sent from the student's VCCS email address and have "*Title IX Appeal*" as the subject line. Failure to submit the appeal letter with all supporting documents within the allotted time will render the original decision final.

**Faculty** must submit their request for an appeal in writing within 10 business days of receiving the written notice of the finding or the sanction(s) to the Executive Vice President. The request must include all

supportive documentation as outlined above. Failure to submit the appeal letter with all supporting documents within the allotted time will render the original decision final.

**Classified Staff** must submit their request for an appeal in writing within 10 business days of receiving the written notice of the finding or sanction(s) decision to the Executive Vice President. This request must include all supportive documents. Failure to submit the appeal packet within the allotted time will render the original decision final.

The Executive Vice President will render a decision within 7 business days.

The Executive Vice President reviews the request to see if it meets the limited grounds and is timely.

The Executive Vice President may:

- Find that the appeal is not timely or substantive and dismiss it. The decision is final.
- Affirm the finding and sanction imposed in the original decision. The decision is final.
- Affirm the finding and reduce, but not eliminate, the sanction. The decision is final.
- Remand the case to the Title IX Coordinator for consideration of new evidence. The decision of Title IX Coordinator is final.

## **W. Academic Freedom and Free Speech**

This Policy does not allow censorship of constitutionally protected expression. This Policy does not apply to curriculum, curricular materials, or abridge the use of particular textbooks. As a “marketplace of ideas,” the College encourages intellectual inquiry and recognizes that such inquiry may result in intellectual disagreements. Verbal or written communications constitute sexual harassment only when such communications are sufficiently severe, pervasive, and objectively offensive that they undermine and detract from an employee’s work performance or a student’s educational experience. Verbal or written communications, without accompanying unwanted sexual physical contact, is not sexual violence or sexual assault.

## **X. False Allegations**

Any individual who knowingly files a false complaint under this Policy or who interferes with an investigation may be subject to disciplinary action, up to and including dismissal for students and termination of employment for faculty and staff. Interference with an investigation may include, but is not limited to:

- Attempting to coerce, compel or prevent an individual from providing testimony or relevant information;
- Removing, destroying or altering documentation relevant to the investigation; or
- Providing false or misleading information to College officials who are involved in the investigation and resolution of a complaint, or encouraging others to do so.

An allegation that cannot be proven by a preponderance of the evidence is not necessarily proof of knowingly filing a false complaint.

## **Y. Consensual Relationships**

Pursuant to VCCS Policy 3.14.2, consenting romantic or sexual relationships between employees and students for whom the employee has a direct professional responsibility are prohibited. Consenting romantic or sexual relationships between employees where one employee has a direct professional responsibility 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 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.

## **Z. Record Keeping**

The Title IX Coordinator shall maintain, in a confidential manner, for at least 5 years all:

1. paper or electronic files of all complaints, including responses taken by College personnel for each complaint;
2. witness statements;
3. documentary evidence;
4. written investigative reports;
5. corrective action reports;
6. review committee records;
7. sanctions;
8. appeals and associated documents;
9. interim and permanent steps taken with respect to the complainant and respondent;
10. responses taken by College personnel for each complaint, including any interim and permanent steps taken with respect to the complainant and respondent; and
11. a narrative of all action taken to prevent recurrence of any harassing incident(s), including any written documentation.