Policy on Sexual Harassment

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Appendix I to Section 6

A. Notice of Nondiscrimination

As a recipient of federal funds, Southwest Virginia Community College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"), which prohibits discrimination on the basis of sex in education programs or activities, admission, and employment. Under certain circumstances, sexual harassment constitutes sexual discrimination prohibited by Title IX. Inquiries concerning the application of Title IX may be referred to the College's Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights. The Title IX Coordinator is Lisa Haywood, whose office is located at Buchanan Hall, room 151, and may be contacted by phone at 276-964-7220 or by email at Lisa.haywood@sw.edu.

B. Policy

1. Southwest Virginia Community College is committed to providing an environment that is free from harassment and discrimination based on any status protected by law. Accordingly, this Policy prohibits sex discrimination, which includes sexual harassment, sexual assault, sexual exploitation, domestic violence, dating violence, and stalking. This Policy also prohibits retaliation. This Policy supplements the following general policy statement set forth by the Virginia Community College System: This College promotes and maintains educational opportunities without regard to race, color, national origin, religion, disability, sex, sexual orientation, gender identity, ethnicity, marital status, pregnancy, childbirth or related medical conditions including lactation, age (except when age is a bona fide occupational qualification), veteran status, 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), and Virginia law.

2. This Policy is not intended to substitute or supersede related criminal or civil law. Individuals are encouraged to 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 remedies that the College can provide.

C. Purpose

The purpose of this Policy is to establish that the College prohibits sexual harassment and retaliation, and to set forth procedures by which allegations of sexual harassment shall be reported, filed, investigated, and resolved.

D. Applicability

This Policy applies to prohibited conduct by or against students, faculty, staff, and third parties, e.g., contractors and visitors, involving a program or activity of the College in the United States. Conduct

outside the jurisdiction of this Policy may be subject to discipline under a separate code of conduct or policy.

E. Definitions

1. Actual Knowledge. Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a College's Title IX Coordinator or any other official of the College who has authority to institute corrective measures on behalf of the College. "Notice" includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

2. Advisor. An advisor is an individual who provides the complainant or respondent support, guidance, and advice. Advisors may be present at any meeting or live hearing but may not speak directly on behalf of the complainant or respondent, except to conduct cross- examination during a live hearing. Advisors may be but are not required to be licensed attorneys.

3. Appeal Officer. The Appeal Officer is the designated employee who reviews the complete record of the formal complaint and written statements of the parties during an appeal of a written determination or dismissal of a formal complaint or any allegations therein. The Appeal Officer decides whether to grant the appeal and determines the result of the appeal.

4. Campus. Campus refers to (i) any building or property owned or controlled by the College within the same reasonably contiguous geographic area of the College and used in direct support of, or in a manner related to, the College's educational purposes, and (ii) any building or property that is within or reasonably contiguous to the area described in clause (i) that is owned 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.

5. Complainant. A complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. A complainant may file a formal complaint against faculty, staff, students, or third parties.

6. 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 touching) 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. 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.

    a) Mental incapacity means that condition of a person existing at the time which prevents the person from understanding the nature or consequences of the sexual act involved (the who, what, when, where, why, and how) and about which the accused knew or should have known. This includes incapacitation by using drugs or alcohol. Intoxication is not synonymous with incapacitation.

    b) Physical helplessness means unconsciousness or any other condition existing at the time which otherwise renders 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.

7. Cross-examination. Cross-examination is the opportunity for a party's advisor to ask questions of the other party and the other party's witnesses.

8. Cumulative Evidence. Cumulative evidence is additional evidence that has been introduced already on the same issue and is therefore unnecessary. The Hearing Officer has the discretion to exclude cumulative evidence.

9. 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.

10. Deliberate Indifference. Deliberate indifference refers to a response to sexual harassment that is clearly unreasonable in light of the known circumstances. The College's response may be deliberately indifferent if the response restricts the rights to the Freedom of Speech and Due Process under the First, Fifth, and Fourteenth Amendments of the U.S. Constitution.

11. Direct Examination. Direct examination is the questioning of a witness by a party who has called the witness to provide such testimony.

12. 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.

13. Due Process. Due process is a right guaranteed by the Fifth and Fourteenth Amendments of the U.S. Constitution. Basic procedural due process guarantees that an individual receives notice of the matter pending that relates to the possible deprivation of a property or liberty interest and the opportunity to be heard. For example, students and employees facing suspension or expulsion/termination for disciplinary reasons must be given notice of the allegations against them prior to any hearing or determination of responsibility. Any disciplinary process must be fair and impartial. Additionally, the opportunity to respond must be meaningful.

14. Education Program or Activity. An education program or activity encompasses all of the College's operations and includes locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the sexual harassment occurs. Examples of education programs or activities includes, but are not limited to, college-sponsored conferences, athletic events and sports teams, student organizations, and wi-fi network.

15. Exculpatory Evidence. Exculpatory evidence is evidence that shows, or tends to show, that a respondent is not responsible for some or all of the conduct alleged in the notice of allegations. The College must provide the respondent with all exculpatory evidence.

16. Facilitator. A Facilitator guides a discussion between parties during the informal resolution process and reaches a decision to the satisfaction of each party.

17. Final Decision. A final decision is the written document that describes any sanctions imposed and remedies provided to the respondent and complainant, respectively, at the conclusion of the formal resolution process.

18. Formal Complaint. A formal complaint is a document filed and signed by a complainant or signed by the Title IX Coordinator that alleges sexual harassment against a respondent and requests the College to investigate the allegation of sexual harassment. The complainant must be participating in or attempting to participate in an education program or activity of the College when the formal complaint is filed. A complainant cannot file a formal complaint anonymously. The Title IX

Coordinator may sign on a complainant's behalf in matters where it is in the best interest of the complainant or the College to do so. The College may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

19. Freedom of Speech. The freedom of speech is a right guaranteed by the First Amendment of the U.S. Constitution to express one's thoughts and views without unlawful governmental restrictions. As governmental entities, Colleges must not infringe on this right. This Policy expressly prohibits censorship of constitutionally protected expression.

20. Hearing Officer. A Hearing Officer is the presiding official of a live hearing who must issue a written determination on responsibility. Colleges may choose to hold live hearings with a single Hearing Officer or by committee.

21. Inculpatory Evidence. Inculpatory evidence is evidence that shows, or tends to show, that a respondent is responsible for some or all of the conduct alleged in the notice of allegations.

22. Preponderance of the Evidence. A preponderance of the evidence is evidence that shows that the allegation against the respondent is more likely to be true than not. The preponderance of the evidence standard is the standard of evidence the College must use to determine responsibility.

23. Relevance. Relevance refers to evidence that tends to prove or disprove whether the respondent is responsible for the alleged conduct. A relevant question asks whether the facts material to the allegations under investigation are more or less likely to be true. A question not directly related to the allegations in the formal complaint generally will be irrelevant.

24. Remedies. Remedies are actions taken or accommodations provided to the complainant after a determination of responsibility for sexual harassment has been made against the respondent. Remedies are designed to restore or preserve equal access to the College's education program or activity. Remedies may be disciplinary or non-disciplinary.

25. Report of Sexual Harassment. A report of sexual harassment occurs when anyone reports an allegation of sexual harassment to the Title IX Coordinator, or one that reaches the Title IX Coordinator through a Responsible Employee. An individual need not be participating or attempting to participate in an education program or activity of the College to file a report. The respondent also does not need to be an employee, student, or otherwise affiliated with the College for a person to file a report against a respondent. A report of sexual harassment does not trigger an investigation or the formal or informal resolution process, but it does require the Title IX Coordinator to meet with the complainant and carry out the procedures described in Section S and/or T of this Policy, as applicable.

26. Respondent. A respondent is an individual who has been reported to have engaged in conduct that could constitute sexual harassment as defined under this Policy. In most cases, a respondent is a person enrolled or employed by the College or who has another affiliation or connection with the College. The College may dismiss a formal complaint when the College has little to no control over the respondent but will offer supportive measures to the complainant and set reasonable restrictions on an unaffiliated respondent when appropriate.

    1. Responsible Employee. A Responsible Employee is an employee who has the authority to take action to redress sexual harassment; who has been given the duty to report sexual harassment to the Title IX Coordinator or Deputy Title IX Coordinator; or an employee a student could reasonably believe has such authority or duty. A Responsible Employee shall not be an employee who, in his or her position at the College, provides services to the campus community as a licensed health care professional, (or the administrative staff of a licensed health care professional), professional counselor, victim support personnel, clergy, or attorney.

27. Review Committee. A Review Committee is the committee consisting of three or more persons, including the Title IX Coordinator or designee, a representative of campus police or campus security, and a student affairs representative, that is responsible for reviewing information related to acts of sexual violence.

28. Sex Discrimination. Sex discrimination is the unlawful treatment of another based on the individual's sex that excludes an individual from participation in, separates or denies the individual the benefits of, or otherwise adversely affects a term or condition of an individual's employment, education, or participation in an education program or activity. The College's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment constitutes sex discrimination under Title IX when such response is deliberately indifferent.

29. Sexual Assault. Sexual assault is any sexual act directed against another person without consent or where the person is incapable of giving consent. Sexual assault includes the specific offenses of Sexual Violence (see E.33) and Fondling.

    a) Fondling (actual or attempted) is defined as (1) the intentional touching of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of the Complainant by the Respondent (i) without the consent of the Complainant, and (ii) for the purpose of sexual degradation, sexual gratification, or sexual humiliation; or (2) the forced touching by the Complainant of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other body parts (i) without consent of the Complainant, and (ii) for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

30. Sexual Exploitation. Sexual exploitation occurs when a person 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 harassment offenses. Examples of sexual exploitation include prostituting another person; non-consensual video or audio-taping of otherwise consensual sexual activity; going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex), and knowingly transmitting HIV or an STD to another.

31. Sexual Harassment. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

    a) *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;

    b) *Hostile Environment:* Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity of the College, including a student's educational experience or an employee's work performance; and

    c) *Clery Act/VAWA Offenses:* Sexual assault/sexual violence, dating violence, domestic violence, and stalking, as defined by this Policy.

32. Sexual Violence. Sexual violence means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual violence includes rape and sexual assault.

33. Stalking. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. Such conduct can occur in person or online, but the conduct must involve an education program or activity of the College.

34. Statement. A statement is a person's intent to make factual assertions during the formal or informal resolution process, including evidence that contains a person's statement(s). Party or witness statements, police reports, Sexual Assault Nurse Examiner (SANE) reports, medical reports, and other records, such as emails and texts may be considered by the Hearing Officer even if they were not subject to cross-examination at a live hearing.

35. Supportive Measures. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the campus environment, or to deter sexual harassment.

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

37. Title IX. Title IX means Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.

38. Title IX Coordinator. The Title IX Coordinator is the employee or employees designated and authorized to coordinate the College's efforts to comply with its responsibilities under Title IX.

39. Workday. A workday is any eight-hour day, Monday through Friday, that the College is open for regular business. Workdays include days when classes are not held, but when employees are expected to be at work.

40. Written Determination. A written determination is the written decision by a Hearing Officer that a respondent is responsible or not responsible for a violation of this Policy by a preponderance of the evidence after a live hearing. A written determination also is the result of an appeal decided by an Appeal Officer.

F. Retaliation

1. No person may intimidate, threaten, coerce, harass, discriminate, or take any other adverse action against any other person for the purpose of interfering with any right or privilege provided by this Policy, or because the person has made a report or filed a formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, live hearing, or any other process described in this Policy.

2. Action is generally deemed adverse if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this Policy.

3. Allegations of retaliation that do not involve sex discrimination or sexual harassment but are related to a report or formal complaint of sexual harassment for the purpose of interfering with any right or privilege provided by this Policy constitutes retaliation.

4. Allegations of retaliation will be investigated and adjudicated as a separate code of conduct violation. Any person found responsible for retaliating against another person is subject to 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 of Sexual Harassment

1. Members of the campus community who believe they have been victims of crimes may report the incident to campus or local police. **All emergencies or any incident where someone is in imminent danger should be reported immediately to campus police/security or local police by dialing 911.**

2. Whether or not a report is made to law enforcement, any person may report incidents of sexual harassment, domestic violence, dating violence, sexual assault, or stalking (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute a violation of this Policy), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by reporting such conduct to a Responsible Employee to ensure that the Title IX Coordinator receives the verbal or written report. The Title IX Coordinator is solely responsible for overseeing the prompt, fair, and impartial investigation and resolution of reports and formal complaints filed with the College.

   Southwest Virginia Community College Title IX Campus Resources

   - Title IX Coordinator:
     Lisa Haywood
     Dean of Students
     Buchanan Hall, Room 151
     276-964-7220
     lisa.haywood@sw.edu

   - Deputy Title IX Coordinator:
     Kim Steiner
     Associate Vice President for Human Resources
     Tazewell Hall, Room 351
     276-964-7389
     kim.steiner@sw.edu

2. During non-business hours, members of the campus community should report alleged violations of this Policy to Lisa Haywood, Title IX Coordinator, at 276-964-7220 or lisa.haywood@sw.edu. Reports may also be made to Campus Police at 276-971-0446. Any situation involving an immediate threat to health or safety, or any emergency, should be reported to 911 immediately.

3. There is no time limit for reporting incidents of sexual harassment with the Title IX Coordinator. However, complainants should report possible violations of this Policy as soon as possible to maximize the College's ability to respond effectively to the report. Failure to report promptly also could result in the loss of relevant evidence.

H.Confidentiality and Anonymous Reports

1. Individuals may be concerned about their privacy when they report a possible violation of this Policy. The College must keep confidential the identity of any individual who has made a report or formal complaint of sexual harassment; any complainant or any individual who has been reported to be the perpetrator of sexual harassment; and any witness related to a report or formal complaint of sexual harassment, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), or as otherwise required by law, or to carry out the purposes of this Policy, including the conduct of any investigation, live hearing, or judicial proceeding arising from any report or formal complaint.

2. The College has a responsibility to respond to conduct that violates this Policy. For this reason, most College employees may not keep secret a report of sexual harassment. The College expects employees to treat information they learn concerning incidents of reported violations of this Policy with respect and as confidentially as possible. College employees must share such

information only with those College and law enforcement officials who must be informed of the information pursuant to this Policy.

2. Responsible Employees must report all alleged violations of this Policy obtained in the course of his or her employment to the Title IX Coordinator as soon as practicable after addressing the immediate needs of the complainant. Other campus employees have a duty to report sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes (Campus Security Authority (CSA) under the Clery Act). CSAs include student/conduct affairs personnel, campus law enforcement, student activities staff, human resources staff, and advisors to student organizations. All employees must report suspected child abuse or neglect to the Title IX Coordinator, Chief of Campus Policy, or Deputy Title IX Coordinator as soon as practicable, but no later than 24 hours after forming such suspicion, pursuant to VCCS Policy Number 3.14.6, Reporting Sexual Child Abuse or Neglect.

3. If a complainant wishes to keep the report of sexual harassment completely confidential, it is recommended that he or she reports the alleged conduct to someone without a duty to report incidents of sexual harassment to the Title IX Coordinator. Full-time employees also may contact the Employee Assistance Program. If the complainant requests that the complainant's identity is not released to anyone else, the College's response will be limited to providing supportive measures, if appropriate and reasonably available. When supportive measures are provided, the College will protect that person's privacy to the extent possible while still providing the supportive measures.

4. The College will accept anonymous reports, but a complainant may not remain anonymous if a complainant files a formal complaint. In the absence of a formal complaint, the College's response will be limited to providing supportive measures if appropriate and reasonably available.

5. The College may pursue the formal resolution process even if the complainant requests the College to take no action. The Title IX Coordinator will notify the complainant in writing within five (5) workdays of the decision to pursue the formal resolution process when he or she is unable to maintain confidentiality or respect the complainant's request for no further action. The Title IX Coordinator will give the complainant's wishes due consideration.

I. Immunity

The College encourages the reporting of incidents that violate this Policy. The use of alcohol or drugs should not be a deterrent to reporting a possible incident of sexual harassment. When conducting the investigation, the College's primary focus will be on addressing the alleged sexual harassment and not on alcohol and drug violations that may be discovered or disclosed. The College does not condone underage drinking or the use of illicit drugs; however, the College will grant immunity from disciplinary action based on the personal consumption of alcohol or drugs to individuals who report incidents that violate this Policy, provided that such report is made in good faith. The College may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

J. Timely Warnings

The College is required by federal law to issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure, to the extent possible, that an alleged victim's name and other identifying information is not disclosed, while still providing enough information for members of the campus community to make decisions to address their own safely in light of the potential danger.

K. Interim Measures

1. Immediate Suspension. Prior to the resolution of a formal complaint, the College may immediately suspend the respondent from an education program or activity when it determines that the respondent's continued presence poses an immediate threat to the physical health or safety of any person arising from the allegations of sexual harassment. Prior to such suspension, the College will conduct an individualized safety and risk analysis, focusing on the respondent and the specific facts and circumstances arising from the allegations of sexual harassment that justify the suspension. The College shall notify the respondent in writing of the specific facts and circumstances that make the immediate suspension necessary and reasonable and shall give the respondent the opportunity to challenge the decision immediately following the notice of suspension.

2. Administrative Leave. The College may place a respondent employee on administrative leave prior to the resolution of a formal complaint. Reasons to place an employee on administrative leave include but are not limited to, the continued presence of the employee may be harmful to the employee or other employees; may hamper an investigation into the employee's alleged conduct; or may disrupt the work environment.

3. Mutual No Contact Order. 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.

L. Supportive Measures

1. The College will offer supportive measures to complainants and respondents, whether or not a formal complaint has been filed, or whether the alleged incident is under investigation by a law enforcement agency. All requests for supportive measures will be provided if appropriate and reasonably available.

2. Supportive measures may include, but are not limited to, course schedule adjustments, reassignment of duty, leaves of absence, alternative parking arrangements, rescheduling class work, assignments, and examinations; allowing alternative class or work arrangements, such as independent study or teleworking; escort services, increased security and monitoring of certain areas of the campus, and other similar measures. Provisions of supportive measures to either party will be kept confidential to the extent possible.

M. Procedures to Follow after an Incident

Anyone who has experienced a sex offense, domestic violence, dating violence, sexual assault, or stalking should take the following action:

1. Find a safe place away from harm.

2. Call 911 or if on campus, contact campus police/security. The Title IX Coordinator may assist you in notifying law enforcement authorities if you wish, and you may decline to notify law enforcement.

3. Call a friend, a campus advocate, a family member, or someone else you trust and ask her or him to stay with you.

4. 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.

5. 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.

   3. 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.

6. You should take the following 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:

   a) Do not wash your hands, bathe, or douche. Do not urinate, if possible.

   b) Do not eat, blow your nose, drink liquids, smoke, or brush your teeth if the incident involved oral contact.

   c) Keep the clothing worn when the incident occurred. If you change clothing, place the worn clothing in a paper bag.

   d) Do not destroy any physical evidence that may be found in the vicinity of the incident by cleaning or straightening the location of the crime. Do not clean or straighten the location of the crime until law enforcement officials have had an opportunity to collect evidence.

   e) Tell someone all the details you remember or write them down as soon as possible.

   f) Maintain text messages, pictures, online postings, video, and other documentary or electronic evidence that may corroborate a formal complaint.

7. The College will enforce protective orders issued by a court of law to the extent possible.

N. Support Services

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

2. For information about available resources, go to: https://www.sw.edu/_docs/Resource-Guide-Great-Expectations.pdf

O. Education and Awareness Program

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 assault, domestic violence, dating violence, and stalking.

2. The program, at a minimum, shall include:

   a) A statement that the College prohibits sexual harassment, including sexual assault, domestic violence, dating violence, and stalking;

   b) The definition of sexual harassment, including sexual assault, domestic violence, dating violence, and stalking;

   c) The definition of consent;

d) 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 sexual assault, domestic violence, dating violence, or stalking against a person other than such individual;

e) Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks;

f) Information on possible sanctions and procedures to follow after an incident of sexual assault, domestic violence, dating violence or stalking;

g) The College's disciplinary procedures;

h) Information on how the College will protect confidentiality; and

i) Written notification about available resources and support services and available supportive measures available if appropriate and reasonably available.

3. The College offers the prevention and awareness program to all new and existing students and employees.

P. Academic Freedom and Freedom of Speech

1. This Policy does not allow censorship of constitutionally protected expression. As a "marketplace of ideas," the College encourages intellectual inquiry and recognizes that such inquiry may result in intellectual disagreements. Verbal or written communications constitute sexual harassment only when such communications are sufficiently severe, pervasive, and objectively offensive that they undermine and detract from a student's educational experience or an employee's work performance. Verbal or written communications, without accompanying unwanted sexual physical contact, does not constitute sexual assault.

2. In addressing all complaints and reports of alleged violations of this Policy, the College will take actions to comply with this Policy that recognize and ensure the free speech rights of students and employees. This Policy does not apply to curricula, curricular materials, or abridge the use of any textbooks.

Q. False Statements

The College prohibits knowingly making false statements or knowingly submitting false information. Any individual who knowingly files a false report or formal complaint, who knowingly provides false information to College officials, or who intentionally misleads College officials who are involved in the investigation or resolution of a report or formal complaint may be subject to disciplinary action, up to and including dismissal for students and termination of employment for faculty and staff. An allegation that cannot be proven by a preponderance of the evidence is insufficient evidence of a knowing false statement.

R.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 to the other 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 prohibited, are unwise and strongly discouraged. The relationship may be viewed in different ways by each of the parties, in retrospect. Additionally,

circumstances may change and conduct that was previously welcome may become unwelcome.

S. Handling Reports of Sexual Violence

1. Reports to Law Enforcement. The Title IX Coordinator will assist members of the campus community in reporting incidents of sexual violence as defined by this Policy to law enforcement authorities upon request. When allowable under Virginia law, the Title IX Coordinator will request the consent of the complainant (or alleged victim if different from the complainant) to report incidents of alleged sexual violence that occur on campus property to law enforcement.

2. Meeting(s) of the Review Committee. Within 72 hours of receiving a report of an alleged act of sexual violence as defined in this Policy against a student or one that allegedly occurred on property owned or controlled by the College or on public property within the campus, or immediately adjacent to and accessible from the campus, the Title IX Coordinator shall convene the College's Review Committee 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.

3. Disclosures to Law Enforcement. Under Virginia law, the Review Committee may determine that the disclosure of information to local law enforcement regarding the alleged incident of sexual violence, including personally identifiable information, is necessary to protect the health or safety of the complainant or other individuals.

    a) The Review Committee may try to reach a consensus, but it is the law enforcement representative of the Review Committee that ultimately determines whether the disclosure of the information, including the personally identifiable information, is necessary to protect the health or safety of the alleged victim or other individuals. The College shall disclose such information to the law enforcement agency that would be responsible for investigating the alleged incident immediately.

    b) The Title IX Coordinator will notify the alleged victim in writing that the College will disclose such information to law enforcement.

4. Disclosures to the Commonwealth's Attorney. If the report of an alleged act of sexual violence would constitute a felony, within 24 hours of the first Review Committee meeting, the law enforcement representative of the Review Committee shall notify the local Commonwealth's Attorney (or other prosecutor responsible for prosecuting the alleged act of sexual violence) and disclose the information received by the Review Committee, including personally identifiable information, if such information was disclosed pursuant to Section S3.

    a) 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 Committee meeting shall disclose the information to the local Commonwealth's Attorney (or other prosecutor responsible for prosecuting the alleged act of sexual violence), including personally identifiable information, if such information was disclosed pursuant to Section S3.

    b) 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.

5. Law enforcement will notify the local Commonwealth's Attorney within 48 hours of beginning an investigation involving a felonious act of sexual violence. Either campus police, the local law enforcement agency, or the State Police will notify the Commonwealth's Attorney pursuant to an MAA/MOU.

6. The College also must inform the complainant of the following:

    a) the available law enforcement options for investigation and prosecution;

    b) the importance of collection and preservation of evidence;

    c) the available options for a protective order;

    d) the available campus options for investigation and adjudication under the institution's policies;

    e) the complainant's rights to participate or decline to participate in any investigation to the extent permitted under state or federal law;

    f) the applicable federal or state confidentiality provisions that govern information provided by a victim;

    g) the available on-campus resources and any unaffiliated community resources, including sexual assault crisis centers, domestic violence crisis centers, or other victim support services;

    h) the importance of seeking appropriate medical attention; and

    i) the College’s obligation to disclose information about the report, including personally identifiable information, to campus or local law enforcement, or to the local Commonwealth’s Attorney, or both, if the review team determines that such disclosure is necessary to protect the health or safety of the complainant or others.

7. In addition to the procedures described in this Section, the College shall follow the procedures described in Section T.

T. Handling Reports of Sexual Harassment, including Domestic Violence, Dating Violence, Sexual Assault, or Stalking

1. Upon receiving actual knowledge of sexual harassment in an education program or activity of the College against a person in the United States, the College must respond promptly in a manner that is not deliberately indifferent. The College will treat complainants and respondents equitably by offering supportive measures to the complainant and by completing either a formal or informal resolution process before imposing any disciplinary sanctions or other corrective actions that are not supportive measures against a respondent.

2. Upon receiving a report of sexual harassment (including domestic or dating violence, sexual assault, or stalking), the Title IX Coordinator shall take the following actions:

    a) promptly contact the complainant to discuss the availability of supportive measures and consider the complainant's wishes with respect to such supportive measures;

    b) inform the complainant that supportive measures are available with or without the filing of a formal complaint;

    c) explain to the complainant the process for filing a formal complaint, including providing the complainant with a Formal Complaint Form, when applicable; and,

d) give the complainant a written explanation of available rights and options as described in Sections H, L, M, N, U, and AA.

3. The Title IX Coordinator shall take the actions described above whether the offense occurred on or off campus.

4. Closing the Report. After following the procedures described in this Section, the Title IX Coordinator must close the report if:

   a) the conduct alleged in the report would not constitute sexual harassment as defined by this Policy, even if proved;

   b) the conduct did not involve an education program or activity of the College; or

   c) the complainant does not file a formal complaint and the Title IX Coordinator does not sign a formal complaint.

      (1) The Title IX Coordinator shall forward the report to the appropriate College official that will determine whether the conduct alleged in the report violates a separate policy or code of conduct and provide written notice of the decision to close the report to the complainant.

      (2) The Title IX Coordinator will document the action(s) taken and the rationale for such action(s).

      (3) The decision to close the report is final.

U.Resolution of Formal Complaints

1. The College's Responsibilities. The College must provide a prompt, fair, and impartial investigation, and resolution of alleged violations of this Policy. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the College and not on the parties, but the parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

   a) When resolving a formal complaint, the College will evaluate all relevant evidence objectively, including both inculpatory and exculpatory evidence, and will make credibility determinations without reference to a person's status as a complainant, respondent, or witness.

   b) The College will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

   c) All employees involved in the resolution of formal complaints, including the appeal process, must not have a conflict of interest or bias for or against complainants or respondents generally, or for or against an individual complainant or respondent.

   d) All employees involved in the resolution of formal complaints receive relevant training.

   e) The College will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following the formal or informal resolution process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

f) At all times prior to a determination of responsibility, the respondent will be presumed not responsible for the alleged conduct. The imposition of interim measures does not constitute a presumption of responsibility.

2. Resolution Process Options. The College may resolve formal complaints by either a formal or informal resolution process.

3. Consolidation of Formal Complaints. The College may consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

4. Suspending an Investigation. The College will comply with all requests for cooperation by the campus police or local law enforcement in investigations. The College may be required to suspend the Title IX investigation while the campus police or the local law enforcement agency gathers evidence. The College will resume its Title IX investigation as soon as the campus police or local law enforcement agency has completed its gathering of evidence. Otherwise, the College's investigation will not be precluded or suspended on the grounds that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

5. Preliminary Investigation. If the respondent's identity is unknown, the Title IX Coordinator (or campus police) will conduct a preliminary investigation to determine the respondent's identity. If the preliminary investigation fails to reveal the identity of the respondent, the Title IX Coordinator shall dismiss the formal complaint because the College must have sufficient information to conduct a meaningful and fair investigation. If the identity of the respondent is revealed, the Title IX Coordinator shall proceed as otherwise provided in this Policy. The Title IX Coordinator will notify the complainant in writing of the result of the preliminary investigation promptly after the preliminary investigation.

6. Time Frame for Resolution of Formal Complaint.

a) The formal resolution of any formal complaint should be completed normally within seventy-five (75) workdays of filing the formal complaint, unless good cause exists to extend the timeframe. For resolving formal complaints, good cause includes but is not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or unavoidable scheduling conflicts. The 75-workday timeframe refers to the entire formal resolution process, which includes the initial determination, investigation, live hearing, determination of responsibility, and the imposition of sanctions and provision of remedies, if any. The 75-workday timeframe does not include appeals. If any step of the process must be suspended or delayed for any reason and more time is necessary, the Title IX Coordinator will notify the parties in writing and give the reason for the delay and an estimated length of the delay.

b) The informal resolution of any formal complaint should be completed within thirty (30) workdays of filing the formal complaint. Timeframes governing the formal resolution process temporarily cease, and only recommence upon reentry into the formal resolution process.

V. Formal Resolution Process

4. Formal Complaint Form. To initiate the formal resolution process, complainants must complete the Formal Complaint Form or other written and signed document that requests an investigation, and submit it to the Title IX Coordinator. After due consideration of the complainant's wishes, the Title IX Coordinator may sign a formal complaint. In determining whether to sign a formal complaint, the Title IX Coordinator will consider the following factors:

a) The seriousness of the allegation(s), including whether the allegation(s) include bodily injury, threats, or the use of weapons;

b) The complainant's or alleged victim's age;

c) Whether there have been other similar complaints of against the same respondent; and,

d) The applicability of any laws mandating disclosure.

1. Notice of Allegations to the Parties. After receiving a formal complaint and as soon as practicable, the Title IX Coordinator will contact the parties to schedule an initial meeting. The correspondence must include the following information:

   a) A copy of the College's Title IX Policy against sexual harassment, including the process by which the College resolves allegations of sexual harassment;

   b) Notice of the allegation(s), including sufficient details known at the time and with sufficient time to prepare a response before the initial meeting. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;

   c) Notice that each party may be accompanied by an advisor of his or her choice at all meetings and the live hearing who may be, but is not required to be, an attorney, and that each party and advisor will have the opportunity to inspect and review evidence;

   d) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the formal or informal resolution process;

   e) A statement that each party must notify the Title IX Coordinator in writing within five

   f) workdays if he or she believes that the Title IX Coordinator has a conflict of interest or bias against the party; and

   g) A statement that the College prohibits knowingly making false statements or knowingly submitting false information during the resolution of a formal complaint, in accordance with Section Q of this Policy.

2. Complainant's Initial Meeting with the Title IX Coordinator. At this meeting, the Title IX Coordinator will:

   a) Determine whether an informal resolution is permissible, and whether the complainant wishes to pursue a resolution (formal or informal) through the College or no resolution of any kind;

   b) Explain avenues for formal resolution and informal resolution of the formal complaint;

   c) Explain that if the complainant chooses an informal resolution, that the complainant may withdraw from the informal resolution process at any time prior to the conclusion of the informal resolution process and pursue a formal resolution process, but may not do so after the conclusion of the informal resolution process;

   d) Explain that records related to the informal resolution process will be maintained for a period of seven years and be made part of the record if a formal resolution process is pursued;

   e) Explain the investigative process, including the right to discuss the allegations under

investigation and to present fact and expert witnesses and other relevant evidence;

f) Discuss confidentiality standards and concerns with the complainant;

g) Discuss non-retaliation requirements;

h) Refer the complainant to campus and community resources, including the local sexual assault crisis center, domestic violence crisis center, victim support service with which the College has entered into a memorandum of understanding, or other appropriate support services;

i) Inform the complainant of any interim measures that will be imposed and any supportive measures that will be provided to the complainant during the pendency of the investigative and resolution processes;

j) Discuss the right to a prompt, fair, and impartial resolution of the formal complaint; and,

k) Answer questions about the Policy and procedures.

3. Respondent's Initial Meeting with the Title IX Coordinator. During this meeting with the respondent, the Title IX Coordinator will:

a) Review the allegations;

b) Determine whether an informal resolution is permissible, and whether the respondent wishes to pursue an informal resolution;

c) Explain avenues for formal resolution and informal resolution of the formal complaint;

d) Explain that if the respondent chooses an informal resolution, that the respondent may withdraw from the informal resolution process at any time prior to the conclusion of the informal resolution process and pursue a formal resolution process, but may not do so after the conclusion of the informal resolution process;

e) Explain that records related to the informal resolution process will be maintained for a period of seven years and be made part of the record if a formal resolution process is pursued;

f) Explain the investigative process, including the right to discuss the allegations under investigation and to present fact and expert witnesses and other relevant evidence;

g) Discuss confidentiality standards and concerns with the respondent;

h) Discuss non-retaliation requirements;

i) Inform the respondent of any interim measures that will be imposed and any supportive measures that will be provided to the respondent during the pendency of the investigative and resolution processes;

j) Refer the respondent to campus and community resources, as appropriate;

k) Discuss the respondent's the right to due process and a prompt, fair, and impartial resolution of the formal complaint;

l) If the respondent is a student and the formal complaint involves an alleged act of sexual violence as defined in this Policy, explain to the respondent that the College will include a

notation on the academic transcript if the respondent is suspended or dismissed after being found responsible, or if the respondent withdraws while under investigation, that the investigation may continue in the respondent's absence, if possible, while being afforded notice of all meetings and the live hearing, if applicable, and an opportunity to inspect, review, and respond to all the evidence; and

m) Answer questions about the Policy and procedures.

4. Title IX Coordinator's Initial Determination.

a) Mandatory Dismissal of Formal Complaint. After completing the initial meetings, the Title IX Coordinator must dismiss the formal complaint if:

(1) the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this Policy even if proved;

(2) the conduct did not involve an education program or activity of the College;

(3) the conduct did not occur against a person in the United States.

b) Optional Dismissal of Formal Complaint. The Title IX Coordinator may dismiss the formal complaint if:

(1) a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any of its allegations. If a complainant requests to withdraw a formal complaint, the Title IX Coordinator will consider the factors listed in Section V1 in determining whether to sign the formal complaint;

(2) the respondent is no longer enrolled or employed at the College; or

(3) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or any of its allegations.

c) After dismissing the formal complaint, the Title IX Coordinator shall forward the formal complaint to an appropriate College official that will determine whether the conduct alleged in the formal complaint violates a separate policy or code of conduct.

d) The Title IX Coordinator will send written notice of the dismissal with specific reason(s) for the dismissal to the parties, simultaneously, within five (5) workdays of completing the initial meetings. This decision may be appealed.

5. Appointment of the Investigator and Conduct of the Investigation.

a) Appointment of Investigator. After an initial determination to continue the formal resolution process or after failed informal resolution process, the Title IX Coordinator will appoint an investigator within five (5) workdays of completing the initial meetings. The Title IX Coordinator will provide the investigator's name and contact information to the complainant and respondent and will forward the formal complaint to the investigator. Within five (5) workdays of such appointment, the investigator, the complainant, or the respondent may identify to the Title IX Coordinator in writing any potential conflict of interest or bias of the appointed investigator. The Title IX Coordinator will consider such information and will appoint a different investigator if it is determined that a material conflict of interest or bias exists.

b) Contacting the Parties. The investigator will contact the complainant and respondent

promptly. In most cases, this should occur within ten (10) workdays from the date of the investigator's appointment. The investigator will schedule meetings with the parties. The parties may provide supporting documents, evidence, and recommendations of witnesses, including character and expert witnesses, to be interviewed for the investigation. Each party may have one advisor present during any meeting with the investigator; however, the advisor may not speak on the party's behalf.

c) Weighing of the Evidence. As part of the investigation, the investigator must weigh the credibility and demeanor of the complainant, respondent, and witnesses, and ensure that credibility determinations are not based on a person's status as a complainant, respondent, or witness; the logic and consistency of the evidence, motives, and any inculpatory and exculpatory evidence.

d) Withdrawal of a Student During an Investigation. The withdrawal of a student from the College while under investigation for an alleged act of sexual violence as defined by this Policy in most cases will 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 inspect, review, and respond to all the evidence and the written investigative report prior to making a determination on responsibility.

5. Upon the student's withdrawal, the College shall place a notation on the student's academic transcript that states, "Withdrew while under investigation for a violation of Southwest Virginia Community College's Title IX Policy." After the College has completed its investigation and resolution of the complaint, the College shall either (a) remove the notation if the student is found not responsible or (b) change the notation to reflect either a suspension or dismissal for a violation of the Policy if either was imposed.

(1) The College shall end the investigation and resolution of the complaint if the College cannot locate the respondent to provide due process. 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 registrar and direct that the appropriate notation is made.

e) Inspection and Review of the Evidence. The parties will have the opportunity to inspect, review, and respond to all the evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination of responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The investigator will send each party and each party's advisor, if any, a copy of the evidence subject to review. The parties will have ten (10) workdays to submit a written response to the evidence and the option to submit additional evidence, which the investigator will consider prior to the completion of the investigative report. Neither the parties nor their advisors may disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX formal resolution process. Nevertheless, the College will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

f) Investigative Report. The investigator will complete an investigative report that fairly summarizes relevant evidence, including but not limited to, all interviews conducted, photographs, descriptions of relevant evidence, the rationale for credibility determinations, summaries of relevant records, and a detailed report of the events in question. The investigative report shall include the following information to the extent possible:

(1) The name and gender of the complainant and, if different, the name and gender of the person reporting the allegation;

(2) The names and gender of all persons alleged to have committed the alleged violation;

(3) 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);

(4) The dates of the report and formal complaint were filed;

(5) The dates the parties were interviewed;

(6) The names and gender of all known witnesses to the alleged incident(s);

(7) The dates that any relevant documentary evidence (including cell phone and other records as appropriate) was obtained;

(8) Any written statements of the complainant or the alleged victim if different from the complainant; and

(9) The date on which the College deferred its investigation and disciplinary process because the complainant filed a law enforcement complaint and the date on which the College resumed its investigation and disciplinary process, if applicable.

g) Submission of the Investigative Report. The investigator will submit the investigative report to the Title IX Coordinator, who will send the investigative report to the parties and the parties' advisors, if any, simultaneously for review and written response as soon as possible, but no later than five (5) workdays after receiving the investigative report from the investigator. The parties will have ten (10) workdays to submit a written response to the investigative report to the Title IX Coordinator. The Title IX Coordinator will not consider the parties' written responses but will ensure that such statements are added to the record. Neither the parties nor their advisors may disseminate the investigative report or use such report for any purpose unrelated to the Title IX formal or informal resolution process.

W. Conduct of Live Hearing

1. The Title IX Coordinator will appoint a Hearing Officer within ten (10) workdays after sending the investigative report to the parties and their advisors, if any. Within five (5) workdays after the appointment, the Hearing Officer will contact the parties to schedule a live hearing. The parties have five (5) workdays after being contacted by the Hearing Officer to notify the Title IX Coordinator in writing of any potential conflict of interest or bias of the Hearing Officer. The Title IX Coordinator will consider such information and will appoint a different Hearing Officer if the Title IX Coordinator determines that a material conflict of interest or bias exists. When the date, time, and place of the live hearing is confirmed, the Hearing Officer will notify the parties in writing simultaneously of the date, time, and place of the live hearing.

2. No later than fifteen (15) workdays before the live hearing, each party must notify the Hearing Officer and the other party of the following:

    i. the name and contact information of the advisor, if new, or notification that a party does not have an advisor available for the hearing, if applicable;

    ii. the names and contact information of witnesses that will be called at the live hearing and the purpose of their testimony at the live hearing;

iii. whether a party intends to be subjected to cross-examination;

iv. a description of documents or other evidence and the purpose of such evidence that will be used at the live hearing;

v. the specific remedy requested; and,

vi. whether a party requests that the live hearing occurs with the parties located in separate rooms with technology that enables the Hearing Officer and the parties to see and hear the party or the witness answering questions simultaneously. Only one party is required to make the request for separate rooms.

3. The Hearing Officer will notify the Title IX Coordinator promptly that the College must appoint an advisor for a party when notified of the need for an advisor. The Title IX Coordinator will appoint the advisor promptly, but no later than ten (10) workdays prior to the live hearing. If a party appears at a live hearing without an advisor, the Hearing Officer shall delay the start of the live hearing until an advisor is available.

4. The Hearing Officer shall ensure that at all evidence obtained during the investigation is made available to the parties at the live hearing.

5. Rules of the Live Hearing.

    a) Evidence. The formal rules of evidence will not be applied except to determine whether the evidence or question presented is relevant or cumulative.

        1) Either party may call character or expert witnesses.

        2) Questions and evidence about a party's sexual predisposition or prior sexual behavior are not relevant, unless:

            a) such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or

            b) the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

        3) If the evidence or witness testimony is, on its face, not relevant or is cumulative, the Hearing Officer may exclude such evidence or witness statement(s), with the rationale for the decision in the pre-hearing determination. The parties may object in writing to such determination within five (5) workdays of the determination. The Hearing Officer shall rule on the objection within five (5) workdays of receipt of the objection.

    b) Standard of Evidence. The live hearing will determine responsibility using the preponderance of the evidence standard.

    c) Participation of Parties and Witnesses. Neither party may choose to waive the right to a live hearing, but parties and witnesses may choose whether to participate in the live hearing or submit to cross-examination.

    d) Recording or Transcript. The Hearing Officer will arrange for the live hearing to be recorded. Each party will receive a copy of the recorded live hearing upon request.

Parties may prepare a transcript of the recording at their own expense. Neither the parties nor their advisors may disseminate the record or transcript or use such record or transcript for any purpose unrelated to the Title IX formal resolution process or related civil proceeding.

e) Opening Statements and Closing Statements. At the sole discretion of the Hearing Officer, the parties may make opening and/or closing statements at the live hearing. The Hearing Officer will determine the time that is allotted for each.

f) Pre-Hearing Determinations. No later than ten (10) workdays prior to the live hearing, the Hearing Officer shall decide (1) whether to exclude any of the proposed evidence or witnesses, and the basis upon which such evidence or witness is excluded; and (2) whether to allow opening statements and closing arguments and the time allotted for both.

g) Rules of Conduct During the Live Hearing. All live hearings will be closed to the public and witnesses will be present only during their testimony. For live hearings that use technology, the Hearing Officer shall ensure that appropriate protections are in place to maintain confidentiality.

1) The College will require all parties, advisors, and witnesses to maintain appropriate decorum throughout the live hearing. Participants at the live hearing are expected to abide by the Hearing Officer's directions and determinations, maintain civility, and avoid emotional outbursts and raised voices.

2) Repeated violations (generally, more than two) of appropriate decorum will result in a break in the live hearing, the length of which shall be determined by the Hearing Officer. The Hearing Officer has the sole discretion to appoint a different advisor to conduct cross-examination on behalf of a party after repeated violations of appropriate decorum or other rules related to the conduct of the live hearing.

6. Role of the Advisor.

a) The role of the advisor at the live hearing is to conduct cross-examination on behalf of a party. The advisor is not to "represent" a party, but only to relay the party's cross- examination questions that the party wishes to have asked of the other party and witnesses so that parties never personally question or confront each other during a live hearing. A party shall not conduct cross-examination on his or her behalf.

b) Each party may retain an attorney at his or her expense or designate a non-attorney advisor to accompany him or her at the live hearing. The advisor may provide advice and consultation to the parties or the parties' witnesses outside of the conduct of the live hearing to assist parties in handling the formal resolution process.

c) A party's advisor must conduct cross-examination at the live hearing directly, orally, and in real time. Only relevant cross-examination questions and follow-up questions, including those that challenge credibility, may be asked. Advisors may not raise objections or make statements or arguments during the live hearing.

d) The College shall appoint an advisor for the live hearing at no cost to a party when the party does not have an advisor. The appointed advisor may be but is not required to be a licensed attorney or anyone with formal legal training. Advisors

may be faculty, staff, students, or volunteers from the local community.

7. Role of the Hearing Officer.

    a) The role of the Hearing Officer is to preside over the live hearing in a fair and impartial manner. After the live hearing, the Hearing Officer must issue a written determination regarding responsibility using the preponderance of the evidence standard of evidence. The Hearing Officer will be the final decision-maker on all matters of procedure during the live hearing.

    b) Before a complainant, respondent, or witness answers a cross-examination or other question, the Hearing Officer first must determine whether the question is relevant or cumulative and explain any decision to exclude a question that is not relevant or is cumulative.

    c) The Hearing Officer may question the parties and witnesses, but they may refuse to respond.

    d) The Hearing Officer must consider all relevant evidence, including statements of a party or witness, even if such statement was not subjected to cross-examination at the live hearing. In determining the amount of weight the Hearing Officer will give to such a statement, the Hearing Officer should consider the reliability of the statement. Factors to consider include, but are not limited to, whether a party or witness commented on or challenged the statement prior to the live hearing, whether the statement is a rumor or something of which the party or witness does not have first- hand knowledge, and whether the person who made the statement has a motive or a conflict of interest that can be demonstrated through other evidence. The level of reliability will determine the amount of weight the Hearing Officer will give to the statement when reaching a determination regarding responsibility. Additionally, the Hearing Officer must not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

    e) Within ten (10) workdays after the live hearing, or with good cause shown as soon as possible, the Hearing Officer will submit a written determination to the Title IX Coordinator. The Hearing Officer must make a finding of responsibility or non-responsibility for each allegation and describe the rationale for the finding based on an objective evaluation of the evidence presented at the live hearing. The written determination shall include the following:

        1) Identification of the allegations potentially constituting sexual harassment defined under this Policy;

        2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and live hearings held. The description of the procedural steps also should include who performed the investigation and the process taken to inspect and review the evidence and disseminate the investigative report, including the adherence to mandated procedural timelines;

        3) Findings of fact supporting the determination;

        4) Conclusions regarding the application of this Policy to the facts;

5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any range of disciplinary sanction(s) to be imposed on the respondent, and whether (not which) remedies designed to restore or preserve equal access to the College's education program or activity will be provided to the complainant.

6) When applicable, a statement that a notation will be placed on the academic transcript that the respondent was suspended or dismissed for a violation of the College's Title IX Policy.

7) When applicable, a statement that the respondent may request the expungement of the notation on the academic transcript for good cause shown and after a period of three years.

8) The College's procedures and permissible bases for the complainant and the respondent to appeal. If the complainant or respondent does not contest the finding or recommended sanction(s) and/or remedies and does not file an appeal within the required time frame, the written determination shall be final.

X. Actions Following the Written Determination

1. The role of the Title IX Coordinator following the receipt of the written determination from the Hearing Officer is to facilitate the imposition of sanctions, if any, the provision of remedies, if any, and to otherwise complete the formal resolution process.

2. The Title IX Coordinator must provide the written determination to the parties simultaneously, with a copy to Human Resources, Conduct Officer, and/or other College officials, as appropriate. The appropriate college official, after consultation with the Title IX Coordinator, will determine the sanction(s) imposed and remedies provided, if any.

3. The parties shall receive the final decision on the imposition of sanction(s), if any, and the provision of remedies, if any, simultaneously within ten (10) workdays of receipt of the written determination by the appropriate college official(s). The College must disclose to the complainant the sanction(s) imposed on the respondent that directly relate to the complainant when such disclosure is necessary to ensure equal access to the College's education program or activity.

4. The Title IX Coordinator shall confer as necessary with employees, community resources, or other support services that will provide such remedies.

5. Any sanctions to be imposed or remedies to be provided should begin after five (5) workdays of issuing the final decision unless a party files an appeal.

6. If the respondent is a third party, the Title IX Coordinator will forward the written determination to the Vice-President of Finance and Administration. Within ten (10) workdays, the Vice-President of Finance and Administration shall determine and impose appropriate sanction(s), as described below. The respondent and the Title IX Coordinator shall receive written notification of sanction(s) in the final decision, if any. The Title IX Coordinator may disclose to the complainant information as described above.

Y. Appeals

1. Within five (5) workdays of receipt of the final decision, either party may appeal the Hearing Officer's written determination regarding responsibility and the final decision related to sanctions

and remedies. The parties also may appeal the College's dismissal of a formal complaint or any of its allegations therein within five (5) workdays of such dismissal. The appeal must be in writing and submitted to the Title IX Coordinator, who will appoint an Appeal Officer within five (5) workdays of receipt of the appeal. The Appeal Officer's decision is final.

2. The Appeal Officer will grant an appeal only on the following bases:

    a) Procedural irregularity that affected the outcome of the matter;

    b) New evidence that was not reasonably known or available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and,

    c) The Title IX Coordinator, investigator(s), or Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

3. Within five (5) workdays of receipt of an appeal request, the Title IX Coordinator will notify the other party that an appeal has been filed and implement appeal procedures equally for both parties.

4. The Title IX Coordinator will compile the record, including the notice of allegations, evidence obtained, investigative report, live hearing recording, written determination, and final decision. The Title IX Coordinator shall forward the record with the appeal request to the Appeal Officer as soon as possible, but no later than ten (10) workdays of receipt of the appeal request.

5. The Appeal Officer must not be the Hearing Officer, the investigator, or the Title IX Coordinator and be free from conflict of interest and bias.

6. Upon receipt of the request for the appeal and the record, the Appeal Officer shall decide whether to grant the appeal, including the rationale for the decision, and notify the parties whether the appeal has been granted simultaneously. The decision shall be made within ten (10) workdays of receipt of the appeal request and record from the Title IX Coordinator.

7. If the Appeal Officer grants the appeal, he or she will notify the parties that they have five (5) workdays to submit a written statement in support of, or against, the outcome of the written determination, final decision, or dismissal of the formal complaint. The Appeal Officer may grant additional time for good cause to both parties.

8. The Appeal Officer shall make the decision based on the record and the parties' written statements, if any. The Appeal Officer shall not receive additional statements or testimony from any other person.

9. The Appeal Officer shall issue a written determination of the result of the appeal and the rationale for such result within ten (10) workdays of receipt of written statements, if any. The Appeal Officer shall provide the written determination to the parties simultaneously.

10. At the conclusion of the appeal, the Title IX Officer shall facilitate the imposition of sanctions, if any, and the provision of remedies, if any.

Z. Informal Resolution Process

1. The informal resolution process is available under the following conditions:

    a) The complainant has filed a formal complaint of hostile environment sexual harassment

involving parties with the same status (e.g., student-student or employee- employee);

b) The Title IX Coordinator has completed the steps described in Sections V1 through V4; and,

c) The parties voluntarily request in writing to resolve the formal complaint through the informal resolution process.

2. Within five (5) workdays after the receipt of the written request to start the informal resolution process, the Title IX Coordinator will appoint a College official to facilitate an effective and appropriate resolution ("Facilitator"). The Title IX Coordinator may serve as a Facilitator. Within five (5) workdays of such appointment (or receipt of the written request), the parties may identify to the Title IX Coordinator in writing any potential conflict of interest or bias posed by such Facilitator to the matter. The Title IX Coordinator will consider such information and will appoint another Facilitator if it is determined that a material conflict of interest or bias exists. Within five (5) workdays of the appointment (or receipt of the written request), the Facilitator will request a written statement from the parties to be submitted within ten (10) workdays. Each party may request that witnesses are interviewed, but the Facilitator will not conduct a full investigation as part of the informal resolution process.

3. Within ten (10) workdays of receiving the written statements, the Facilitator will hold a meeting(s) with the parties and coordinate informal resolution measures. The Facilitator shall document the meeting(s) in writing. Each party may have one advisor of his or her choice during any meeting; however, the advisor may not speak on the party's behalf.

4. The informal resolution process should be completed within thirty (30) workdays in most cases, unless good cause exists to extend the time. The parties will be notified in writing and given the reason for the delay and an estimated time of completion.

5. Any resolution of a formal complaint through the informal resolution 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.

6. At the conclusion of meetings, interviews, and the receipt of statements, the Facilitator will write a summary of such in a written informal resolution report and provide the parties with the informal resolution report simultaneously. The written informal resolution report shall include the notice of allegations, a meeting(s) summary, remedies provided, if any, sanctions imposed, if any, and whether the formal complaint was resolved through the informal resolution process. The Facilitator will forward the written informal resolution report to the Title IX Coordinator, when applicable.

7. At the conclusion of the informal resolution process, if the formal complaint was resolved to the satisfaction of the parties, the parties will provide a written and signed statement as such for the record. The decision will be final, and the matter will be closed.

8. At any time prior to resolving a formal complaint through the informal resolution process, either party may withdraw in writing from the informal resolution process and resume or begin the formal resolution process.

9. If the formal complaint is not resolved through the informal resolution process, the Title IX Coordinator shall resume the formal resolution process.

10. The Facilitator shall not be a witness as part of the formal resolution process, but the written informal resolution report (if applicable) shall be part of the record.

AA. Sanctions & Corrective Actions

1. The College will take reasonable steps to address any violations of this Policy and to restore or preserve equal access to the College's education programs or activities. 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, written or verbal apology, verbal or written warning, probation, suspension, and expulsion from the College.

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, or patrons from the general public, will be prohibited from having access to the campus. Depending on the violation, this prohibition may be permanent or temporary.

5. Sanctions imposed do not take effect until the resolution of any timely appeal. However, the College may keep in place any interim measures when necessary.

6. Informal resolution process remedies include mandatory training, reflective writing assignment, counseling, written counseling memorandum by an employee's supervisor, suspension, termination, or expulsion, or other methods designed to restore or preserve equal access to the College's education programs or activities.

BB. Academic Transcript Notations and Expungement

1. If a student is found responsible for an act of sexual violence as defined by this Policy and is suspended or dismissed, the student's academic transcript shall be noted as follows: "Suspended/Dismissed for a violation of Southwest 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 registrar to remove the notation from the student's academic transcript.

2. If a student withdraws from the College while under investigation involving an act of sexual violence as defined by this Policy, the student's academic transcript shall be noted as follows: "Withdrew while under investigation for a violation of Southwest Virginia Community College's Title IX Policy." Students are strongly encouraged not to withdraw from the College.

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

4. Notations on academic transcripts regarding suspensions and dismissals shall be placed on

the student's academic transcript after resolution of any timely appeal.

5. The College shall expunge the notation from the academic transcript of any student for good cause shown and after a period of three (3) years.

    a) Persons seeking to expunge the notation on an academic transcript shall submit a written request for expungement to the Vice-President of Academics and Student Affairs no sooner than three years after the date the College placed the notation on the academic transcript.

    b) The request for expungement must contain sufficient information to support a finding of good cause. For expungement purposes, good cause includes:

        1) the act of sexual violence did not involve serious bodily injury, the use of force, or threat, and the former respondent demonstrates remorse and/or rehabilitation;

        2) the former respondent committed the Policy violation while under the age of 18 and the former respondent demonstrates remorse and/or rehabilitation; and,

        3) any other reason that, in interest of justice, the notation should be expunged.

    c) The Vice-President of Academics and Student Affairs shall issue a written decision and the rationale for such decision within ten (10) workdays of receipt the request.

    d) If the request for expungement is denied, the former respondent may submit another request for expungement no sooner than three (3) years after the denial of the request. This decision is final.

CC. Training and Training Materials

1. Title IX Coordinator(s), investigators, Hearing Officers, Appeal Officers, and Facilitators for the informal resolution process must receive annual training, as appropriate, on the following topics:

    a) The definition of sexual harassment;

    b) The scope of the College's education programs or activities;

    c) How to conduct an investigation and grievance process, including live hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;

    d) The definition of relevance;

    e) Investigative report writing; and,

    f) Technology that may be used at live hearings.

2. College-appointed advisors receive training on the definitions of sexual harassment, consent, preponderance of the evidence, and relevance.

3. Training materials must not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

4. All training materials must be available on the College's website.

DD. Record Keeping

1. The Title IX Coordinator, Deputy Title IX Coordinator, if applicable, and any other employee as appropriate, e.g., HR Director, shall maintain in a confidential manner, for at least seven (7) years from the date of creation of the last record pertaining to each case, in paper or electronic files of the following:

    a) The complete file for each sexual harassment investigation and formal resolution process, including (1) any determination regarding responsibility; (2) any audio or audiovisual recording or transcript of the live hearing; (3) any disciplinary sanctions imposed on the respondent; and, (4) any remedies provided to the complainant;

    b) Records of any appeal and its result;

    c) Records of any informal resolution process and its result;

    d) All materials used to train Title IX Coordinators, investigators, Hearing Officers, Appeal Officers, and Facilitators for an informal resolution process.

2. Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. Records must explain why the College's response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College's education programs or activities.

3. If the College does not provide a complainant with supportive measures, then the College must document the reasons why such a response was not clearly unreasonable in light of the known circumstances, including whether such decision was made based on the complainant's request or desire for the College to take no action or to provide supportive measures.

4. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.

EE. Use of Template/Reports to System Counsel

All community colleges of the Virginia Community College System shall use this template. All reports of alleged incidents of sexual harassment shall be reported to the Office of System Counsel.