Raritan Valley Community College TITLE IX POLICY PROHIBITING HARASSMENT AND DISCRIMINATION ON THE BASIS OF SEX

Preamble

The U.S. Department of Education's Office for Civil Rights (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972. Title IX protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance.

Title IX states that: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

The Board of Trustees of the Raritan Valley Community College (RVCC) has adopted this Policy with the intent of complying with the Title IX Rule effective August 14, 2020 by the OCR cited as 34 CFR Part 106.

POLICY: SEXUAL HARASSMENT, INCLUDING SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING, AND RETALIATION

1. Glossary

- ***Advisor*** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the Resolution Process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- ***Appeal Decision-maker*** means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- ***Complainant*** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- ***Confidential Resource*** means an employee who is not a Mandated Reporter of notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- ***Decision-maker*** means the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- ***Directly Related Evidence*** is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker(s). Compare to Relevant Evidence, below.
- ***Education Program or Activity*** means locations, events, or circumstances where Raritan Valley Community College (RVCC) exercises substantial control over both the Respondent and the context in which the sexual harassment and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the RVCC.
- ***Final Determination*** is a conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- ***Finding*** is a conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").
- ***Formal Complaint*** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging a Respondent engaged in sexual harassment or retaliation for engaging in a protected activity and requesting that the RVCC investigate the allegation(s).
- ***Formal Grievance Process*** means a method of formal resolution designated by the College to address conduct that falls within the policies included below, and which

complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304.

- ***Grievance Process Pool*** includes any Investigators, Hearing Decision-makers, Appeal Decision-makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same complaint).
- ***Informal Resolution*** means a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator or Deputy Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- ***Investigator*** means the person(s) authorized by the College to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and a file of Directly Related Evidence.
- ***Mandated Reporter*** means an RVCC employee who is obligated by policy to share knowledge, notice, and/or reports of sexual harassment and/or retaliation with the Title IX Coordinator, Deputy Title IX Coordinator and/or their supervisor.[1]
- ***Notice*** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- ***Official with Authority (OWA)*** means an RVCC employee who has responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the College.
- ***Parties*** means the Complainant(s) and Respondent(s), collectively.
- ***Recipient*** means a postsecondary education program that receives federal funding.
- ***Relevant Evidence*** is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- ***Remedies*** are post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College's education program.
- ***Respondent*** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity under this Policy.
- ***Resolution*** means the result of an Informal Resolution or Formal Grievance Process.

[1] Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- ***Sanction*** means a consequence imposed on a Respondent who is found to have violated this Policy.
- ***Sexual Harassment*** is an umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence. See Section 16 for greater detail.
- ***Student*** means any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with the College.
- ***Title IX Coordinator*** is at least one official designated by the College to ensure compliance with Title IX and the College's Title IX program. References to the Coordinator throughout this policy encompass the Deputy Title IX Coordinator or a designee of the coordinator for specific tasks.
- ***Title IX Team*** refers to the Title IX Coordinator, Deputy Title IX Coordinator, and any member of the Grievance Process Pool.

2. Rationale for Policy

RVCC is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment and retaliation for engaging in a protected activity.

RVCC values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, RVCC has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation.

3. Applicable Scope

The core purpose of this policy is the prohibition of sexual harassment and retaliation. When an alleged policy violation is reported, the allegations are subject to this resolution process determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the RVCC community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the RVCC community. This community includes, but is not limited

to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, vendors, contractors, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed and investigated in accordance with this Policy.

RVCC recognizes that reports and/or Formal Complaints under this Policy may include violations of other College policies; may involve various combinations of students, employees, and other members of the College community; and may require the simultaneous attention of multiple RVCC departments. Accordingly, all RVCC departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable College policies, to provide uniform, consistent, efficient, and effective responses to alleged sexual harassment or retaliation.

4. Title IX Coordinator

The Vice President of Human Resources & Administration serves as the Title IX Coordinator and oversees implementation of this Policy. The Title IX Coordinator has the primary responsibility for coordinating College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent sexual harassment and retaliation prohibited under this Policy.

All parties will be provided with a comprehensive brochure detailing resources, which the Title IX Coordinator may also review with the parties in person.

5. Independence and Conflict of Interest

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, sexual harassment, or retaliation by the Title IX Coordinator, contact the President. Concerns of bias, sexual harassment, retaliation, or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

6. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this Policy and procedures, may be made internally to:

Cheryl Wallace, VP of Human Resources & Administration
Title IX Coordinator
Office of Human Resources
118 Lamington Road, Branchburg, NJ 08876:
(908) 526-2100 x8260
Email: Cheryl.Wallace@raritanval.edu
Web: www.raritanval.edu

Jason Fredericks, Dean of Student Affairs
Deputy Title IX Coordinator
Office of Student Affairs
118 Lamington Road, Branchburg, NJ 08876
908-526-1200 X8311
Email: Jason.Fredericks@raritanval.edu
Web: www.raritanval.edu

Dr. Rikita Singh, Executive Director of Student Support
Investigator
Office of Student Support
118 Lamington Road, Branchburg, NJ 08876
908-526-1200 X8921
Email: Rikita.Singh@raritanval.edu
Web: www.raritanval.edu

RVCC has also classified most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: http://www.ed.gov/ocr

For complaints involving employee-on-employee conduct: https://www.eeoc.gov/contact-eeoc (EEOC)[2]
EEOC Newark Area Office
Two Gateway Center
283-299 Market St, Suite 1703
Newark, NJ 07102
1-800-669-4000

7. Notice/Complaints of Sexual Harassment and/or Retaliation

Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

1) File a report or Formal Complaint with, or give verbal notice to, the Title IX Coordinator or Deputy Title IX Coordinator. Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office listed for the Title IX Coordinator or any other official listed above.

[2] EEOC has jurisdiction over Title IX employment claims.

2) [Report online, using the reporting form posted at www.raritanval.edu/titleix or click this link. Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. The College tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant. Because reporting carries no obligation to initiate a formal response, and because the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows the College to discuss and/or provide supportive measures.

As used in this Policy, the term "Formal Complaint" means a document or electronic submission (such as by electronic mail or through an online portal provided by RVCC for this purpose) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

8. Supportive Measures

RVCC will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They may be offered with or without fee depending on the resource to the parties to restore or preserve access to the College's education program or activity, including measures designed to protect the safety of all parties and/or the College's educational environment and/or to deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they may file a Formal Complaint with the College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The College will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the College's ability to provide those supportive measures. RVCC will act to ensure as minimal an academic impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG)
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing complaint under this Policy.

9. Interim Suspension and Emergency Removal

The College can act to remove a student Respondent from its education program or activities—partially or entirely—on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal arising from the allegation of sexual harassment. This risk analysis is performed by the Title IX Coordinator or Deputy Title IX Coordinator in conjunction with the Behavioral Intervention Team (also known as BIT) using its standard objective violence risk assessment procedures.

When an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon as reasonably possible thereafter, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When

this meeting is not requested, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this Policy to implement or modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, if applicable, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take incomplete grades without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural/club athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact on the parties as possible.

When the Respondent is an employee, or a student employee, accused of misconduct in the course of their employment, existing provisions for interim action are applicable instead of the above emergency removal process.

10. Promptness

Once RVCC has received notice or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in RVCC procedures will be delayed, RVCC will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. Confidentiality/Privacy

Every effort is made by the College to preserve the confidentiality of reports.[3] **Confidentiality** exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to counselors. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see section 17. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

RVCC will not share the identity of any individual who has made a report or Formal Complaint of sexual harassment or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sexual harassment or retaliation; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA)[4] or its implementing regulations;[5] or as required by law; or to carry out the purposes of 34 C.F.R. Part 106, including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

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[3] For the purpose of this Policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of college employees who "need to know" in order to assist in the assessment, investigation, and resolution of the complaint. All employees who are involved in the College's response to notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the College's Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies.

[4] 20 U.S.C. 1232g

[5] 34 C.F.R. § 99

The College reserves the right to determine which RVCC officials have a legitimate educational interest in being informed about incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Office of the President, Division of Student Affairs, Office of Human Resources, Branchburg Police, and the Behavioral Intervention/Threat Assessment Team. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The College may contact parents/guardians of students to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

12. Jurisdiction

This Policy applies to the College's education program and activities, to conduct that takes place on property owned or controlled by the College, at RVCC-sponsored events, and in buildings owned or controlled by the College's recognized student organizations. The Respondent must be a member of RVCC's community in order for this Policy to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprives a person of access to College's education program or activities. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial RVCC interest.

Regardless of where the conduct occurred, the College will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus (including virtual learning and employment environments) or in an off campus sponsored program or activity. A substantial RVCC interest includes:

1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.

2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.

3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.

4) Any situation that substantially interferes with the educational interests or mission of the College.

If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will assist the Complainant in identifying appropriate institutional and local resources and support options. If criminal conduct is alleged, the College can assist in contacting local or institutional law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the College's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator.

In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from RVCC's property and/or events.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers and/or to these Policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to the College where sexual harassment policies and procedures of the facilitating or host organization may give the Complainant recourse.

13. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator,

who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

14. Online Sexual Harassment and/or Retaliation

College policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's education program and activities or when they involve the use of college networks, technology, or equipment.

Although RVCC may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to RVCC, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community.

15. Sexual Harassment

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters protected by academic freedom. The Department of Education's Office for Civil Rights (OCR), and the Equal Employment Opportunity Commission (EEOC), regard sexual harassment as an unlawful discriminatory practice.

The section below describes the specific forms of legally prohibited harassment that are also prohibited under RVCC's Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of RVCC's Policy, though supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offenses.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

RVCC has adopted the following definitions of sexual harassment in order to address the unique environment of an academic community. Two definitions are required by federal law. While they overlap, they are not identical, and they each apply as noted.

Title VII Sexual Harassment applies to situations where an employee is subjected to workplace sexual harassment.

a. Unwelcome verbal, written, graphic, and/or physical conduct;
b. that is severe or pervasive and objectively offensive;
c. on the basis of sex/gender, that
d. unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.

Title IX Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This definition applies to all complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator. Sexual harassment includes:

Conduct on the basis of sex,[6] or that is sexual in nature, that satisfies one or more of the following:

1) **Quid Pro Quo:**
   a. an employee of the recipient,
   b. conditions[7] the provision of an aid, benefit, or service of the recipient,
   c. on an individual's participation in unwelcome sexual conduct.

2) **Sexual Harassment (Hostile Environment):**
   a. unwelcome conduct,
   b. determined by a reasonable person,
   c. to be so severe, and
   d. pervasive, and,
   e. objectively offensive,
   f. that it effectively denies a Complainant equal access to the Recipient's education program or activity.

[6] Including gender identity, gender expression, sexual orientation, and sex stereotypes.
[7] Implicitly or explicitly.

3) **Sexual Assault**, defined as:
    a. Any sexual act[8] directed against a Complainant,[9]
        - without their consent, or
        - instances in which the Complainant is incapable of giving consent.
    b. **Incest:**
        - Non-forcible sexual intercourse,
        - between persons who are related to each other,
        - within the degrees wherein marriage is prohibited by NJ law.
    c. **Statutory Rape:**
        - Non-forcible sexual intercourse,
        - with a person who is under the statutory age of consent of 16.
4) **Dating Violence**, defined as:
    a. violence,
    b. on the basis of sex,
    c. committed by a person,

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[8] A 'sexual act" is specifically defined by federal regulations to include one or more of the following:
Rape:
- The carnal knowledge of a Complainant OR Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
- without their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity."

Sodomy:
- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:
- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling:
- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

[9] This would include having another person touch you sexually, forcibly, and/or without their consent.

d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
        a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
        b) Dating violence does not include acts covered under the definition of domestic violence.

5) **Domestic Violence**,[10] defined as:
    a. violence,
    b. on the basis of sex,
    c. committed by a current or former spouse or intimate partner of the Complainant,
    d. by a person with whom the Complainant shares a child in common, or
    e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
    f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Jersey, or
    g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of New Jersey.

6) **Stalking**, defined as:
    a. engaging in a course of conduct,
    b. on the basis of sex,
    c. directed at the Complainant, that
        i. would cause a reasonable person to fear for the person's safety, or
        ii. the safety of others; or
        iii. Suffer substantial emotional distress.

    For the purposes of this definition—
    - Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action,

[10] To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

RVCC reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy. The most serious offenses are likely to result in suspension/expulsion/termination.

A. Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," which elicits the response, "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is <u>unreasonable</u> pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to Bondage, discipline/dominance, submission/sadism and masochism (BDSM) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, thus RVCC’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including due to alcohol or other drug consumption. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

16. Retaliation

Protected activity under this Policy includes reporting alleged misconduct that may implicate this Policy, participating in the resolution process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. RVCC will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

RVCC and any member of RVCC's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute

retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

17. Mandated Reporting

All College employees (faculty, staff, administrators) are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately, although there are some limited exceptions.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or institution official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the College reporting options for a Complainant or third party (including parents/guardians when appropriate):

A. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors and staff
- Campus Safety and Security
- On-campus Victim Advocates
- Athletic trainers (if licensed and privileged under state statute, and/or working under the supervision of a licensed health professional)
- Community-based (non-employees):
    - Licensed professional counselors and other medical providers
    - Local rape crisis counselors
    - Domestic violence resources
    - Local or state assistance agencies
    - Clergy/Chaplains
    - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Institutional counselors and the Employee Assistance Program (for employees) are available to help free of charge and may be consulted on an emergency basis during normal business hours.

B. Anonymous Notice to Mandated Reporters

At the request of a Complainant, notice may be given anonymously (i.e., without identification of the Complainant) to the Title IX Coordinator by a Mandated Reporter. The Mandated Reporter cannot remain anonymous themselves.

C. Mandated Reporters and Formal Notice/Complaints

All RVCC employees (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.
Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the College.

Supportive measures may be offered as the result of such disclosures without formal RVCC action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sexual harassment or retaliation of which they become aware is a violation of RVCC's Policy and can be subject to disciplinary action for failure to comply/failure to report.

Though this may seem obvious, when a Mandated Reporter is engaged in sexual harassment and/or retaliation in violation of this Policy, they still have a duty to report their own misconduct, though the College is technically not on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of sexual harassment and/or retaliation under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

18. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the institution and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process, usually upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Recipients may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When the College proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the College's ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, the College may offer Informal Resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by RVCC and to have the incident(s) investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

19. Federal Timely Warning Obligations

RVCC must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

20. False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation, hearing, or informal resolution can be subject to discipline under appropriate RVCC policies.

21. Amnesty

The College Community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to RVCC officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College Community that Complainants choose to report misconduct to college officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, RVCC maintains a policy of offering parties and witnesses amnesty from minor policy violations–such as underage consumption of alcohol or the use of illicit drugs–related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

A. Students

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Campus Security).

The College maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, the College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

22. Federal Statistical Reporting Obligations

Certain institutional officials–those deemed Campus Security Authorities–have a duty to report the following for federal statistical reporting purposes (Clery Act):

1) All "primary crimes," which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson
2) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
3) VAWA-based crimes,[11] which include sexual assault, domestic violence, dating violence, and stalking
4) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations

All personally identifiable information is kept private, but statistical information must be shared with campus safety regarding the type of incident and its general location (on or off campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include: student affairs/student conduct staff, campus security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

23. Preservation of Evidence

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. The College will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance at the hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.

[11] VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container.
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

Stalking

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
    - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
    - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages, to include those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

24. Notice/Complaint

Upon receipt of a Formal Complaint or notice of an alleged policy violation by the Title IX Coordinator, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the College needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint.

The Title IX Coordinator will then initiate at least one of three responses:

1) Offering supportive measures because the Complainant does not want to file a Formal Complaint
2) An Informal Resolution (upon submission of a Formal Complaint)
3) A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint)

The College uses a Formal Grievance Process as described below to determine whether the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, and/or their effects.

25. Initial Assessment

Following receipt of notice or a Formal Complaint of an alleged violation of this Policy, the Title IX Coordinator[12] engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
    - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.

[12] If circumstances require, the President, Title IX Coordinator or Deputy Title IX Coordinator will designate another person to oversee the Resolution Process should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and grievance process.
    - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determine the appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
    - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
    - If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the 2020 Title IX regulations:
        - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
            - an incident, and/or
            - a pattern of alleged misconduct, and/or
            - a culture/climate issue

If alleged misconduct does not fall within the scope of the Title IX regulations, the Title IX Coordinator determines that the regulations do not apply (and will "dismiss" that aspect of the complaint, if any), assesses which policies may apply and will refer the matter accordingly. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX, which does not limit the College's authority to address a complaint with an appropriate process and remedies.

A. Violence Risk Assessment

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team (BIT) as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

1) Emergency removal of a Respondent on the basis of immediate threat to an individual or the community's physical health/safety
2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant

3) Whether the scope of the investigation should include an incident, and/or pattern of misconduct and/or climate of hostility/harassment
4) To help identify potential predatory conduct
5) To help assess/identify grooming behaviors
6) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful
7) Whether to permit a voluntary withdrawal by the Respondent
8) Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent
9) Assessment of appropriate sanctions/remedies (to be applied post-hearing)
10) Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Intervention Team (BIT)/CARE team members.

A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT/CARE or threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

B. Dismissal (Mandatory and Discretionary)[13]

The College must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

1) The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above, even if proved
2) The conduct did not occur in an education program or activity controlled by the College (including buildings or property controlled by recognized student organizations), and/or the college does not have control of the Respondent
3) The conduct did not occur against a person in the United States
4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the College's education program or activity, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of the College.[14]

The College may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
2) The Respondent is no longer enrolled in or employed by the College
3) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it. Upon any dismissal, the College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal.

[13] These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

[14] Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

26. Counterclaims

The College is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Process below. Investigation of such claims may take place after resolution of the underlying initial complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

27. Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.[15]

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

A. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the Resolution Process. The parties may choose Advisors from inside or outside of the college community.

The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the

[15] "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

College, the Advisor will have been trained by the college and be familiar with the RVCC's Resolution Process.

If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with RVCC policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.

B. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

C. Advisors in Hearings/Recipient-Appointed Advisor

Under the Title IX Regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the parties and witnesses.

D. Pre-Interview Meetings

Advisors and their advisees may request to meet with the Investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and RVCC's policies and procedures.

E. Advisor Violations of RVCC Policy

All Advisors are subject to the same RVCC policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the College. Advisors are expected to advise their advisees without disrupting proceedings. Advisors

should not address College officials or Investigators in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee[16] during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding during questioning.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this Policy, or who refuses to comply with the College's established rules of decorum for the hearing, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including the College requiring the party to use a different Advisor or providing a different RVCC-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

F. Sharing Information with the Advisor

The College expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisors.

The College provides a consent form that authorizes the College to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before RVCC is able to share records with an Advisor.

G. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by RVCC.

[16] Subject to the state law provisions or RVCC policy above.

RVCC may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the college's privacy expectations.

H. Expectation of an Advisor

The College generally expects an Advisor to adjust their schedule to allow them to attend RVCC meetings/interviews/hearings when planned, but the College may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

I. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

28. Resolution Processes

Resolution proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accordance with college Policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose as part of an Informal Resolution. RVCC encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Grievance Process is the College's primary resolution approach unless Informal Resolution is elected by all parties and the College.

A. Informal Resolution

Three options for Informal Resolution are detailed in this section.

1) **Supportive Resolution**. When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation

2) **Alternative Resolution**. When the parties agree to resolve the matter through an alternative resolution mechanism including mediation, restorative practices, facilitated dialogue, etc. as described below, often before a formal investigation takes place (See Section B)

3) **Accepted Responsibility**. When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the Resolution Process (See Section C)

To initiate Informal Resolution, a Complainant must submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties' consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. The Title IX Coordinator has discretion to determine if an investigation will be paused during

Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

The College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

B. Alternative Resolution Approaches

Alternative Resolution is an informal approach, including mediation, restorative practices, facilitated dialogue, etc., by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternative Resolution facilitator with this type of complaint
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Alternative Resolution are not appealable.

C. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, restrictions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of RVCC policy and implements agreed-upon restrictions and remedies and determines the appropriate sanction(s) in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

29. Formal Grievance Process Team

The Formal Grievance Process relies on a team of administrators[17] ("the Pool") to carry out the process.

A. Team Member Roles

Members of the Pool are trained annually, and can serve in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

B. Team Member Appointment

The Title IX Coordinator appoints the team, which acts with independence and impartiality.

C. Team Member Training

Team members receive annual training. This training includes, but is not limited to:

- The scope of the RVCC's Sexual Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence

[17] External, trained third-party neutral professionals may also be used to serve in team roles

- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias for or against Respondents and/or Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of sexual harassment and/or retaliation allegations
- Recordkeeping

30. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination

- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement about the College's policy on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the parties that the College's policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how the party may request disability accommodations during the Resolution Process
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- An instruction to preserve any evidence that is directly related to the allegations

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official RVCC records, or emailed to the parties' college-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

31. Resolution Timeline

The College will make a good faith effort to complete the Resolution Process within a sixty to ninety (60-90) business-day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

32. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints a team member to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

33. Ensuring Impartiality

Any individual materially involved in the administration of the Resolution Process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another team member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator or Deputy Title IX Coordinator, concerns should be raised with the President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

34. Investigation Timeline

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

35. Investigation Process Delays and Interactions with Law Enforcement

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

The College will communicate the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary. The College will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, RVCC will implement supportive measures as deemed appropriate.

RVCC action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

36. Investigation Process Steps

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations

    - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the team or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination, for a ten (10) business-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days.
- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.

- Incorporate any relevant feedback and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report.

37. Witness Role and Participation in the Investigation

Witnesses (as distinguished from the parties) who are employees of the College are strongly encouraged to cooperate with and participate in the College's investigation and Resolution Process. Student witnesses and witnesses from outside the College community are encouraged to cooperate with RVCC investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

38. Interview Recording

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of and consent to[18] audio and/or video recording.

39. Evidentiary Considerations

Neither the investigation nor the hearing will consider: (1) incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or (2) questions and evidence about the Complainant's sexual predisposition; or (3) questions and evidence about the Complainant's prior sexual behavior, unless 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 if 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.

[18] Consent of the interviewer and interviewee is required in "dual-party recording" states.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

40. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. The hearing cannot be held less than ten (10) business days from the conclusion of the investigation–when the final investigation report is transmitted to the parties and the Decision-maker(s)–unless all parties and the Decision-maker(s) agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker from the pool of team members and provide a copy of the investigation report and the file of directly related evidence.

41. Hearing Decision-maker Composition

The College will designate a single Decision-maker or a three-member panel from the pool of team members, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the complaint related to the case. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator or designee.

42. Additional Evidentiary Considerations in the Hearing

Previous disciplinary action of any kind involving the Respondent may not be used unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility, assuming the

college uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact and/or mitigation statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

43. Hearing Notice

No less than ten (10) business days prior to the hearing,[19] the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) based on demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.

[19] Unless an expedited hearing is agreed to by all parties.

- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and the College will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.
- An invitation to each party to submit to the Chair an impact and/or mitigation statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-90 business-day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in Resolution Proceedings that occur during months between contracts.

44. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair as soon as possible, preferably at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

45. Pre-Hearing Preparation

After any necessary consultation with the parties, the Chair will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10)-business-day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

46. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration of a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

At each pre-hearing meeting with a party and/or their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the same time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

47. Hearing Procedures

At the hearing, the Decision-maker(s) have the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Sexual Harassment Policy.

Participants at the hearing may include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties. Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Chair will answer all questions of procedure.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-maker(s) and the parties, and the witnesses will then be excused.

48. Joint Hearings

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, The Chair may choose to hear the allegations jointly.

The Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

49. The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review the challenge and decide.

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

50. Investigator Presentation of Final Investigation Report

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors).

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for Investigators about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

51. Testimony and Questioning

Once the Investigator(s) present(s) the report and respond(s) to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

52. Refusal to Submit to Questioning; Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared. It is otherwise considered off-limits, and an Advisor who is an institutional employee is temporarily exempted from mandated reporter responsibilities related to their interaction with their advisee during the Resolution Process.

53. Hearing Recordings

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the College will be permitted to review the recording or review a transcript of the recording, upon request to the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

54. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker(s) will also review any pertinent conduct history provided by the appropriate administrator and will recommend/determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), and any sanction(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

55. Notice of Outcome

The Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. The Title IX Coordinator will then share the letter, which includes the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors within 7 business days of receiving the deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official RVCC records, or emailed to the parties' college-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding for each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanction(s) issued which the College is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the College's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered final by the College, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

56. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation

- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

A. Student Sanctions

The following are the common sanctions that may be imposed upon students singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any RVCC's policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either RVCC-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at RVCC.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend RVCC-sponsored events.

- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

B. Student Organization Sanctions

The following are the common sanctions that may be imposed upon student organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any RVCC policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of RVCC funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student organization recognition for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student organization may not conduct any formal or informal business or participate in RVCC-related activities, whether they occur on or off campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the College.
- *Expulsion*: Permanent termination of student organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges*: Restricted from accessing specific RVCC privileges for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

C. Employee Sanctions/Responsive/Corrective Actions

Responsive actions for an employee who has engaged in sexual harassment and/or retaliation may include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions*: In addition to or in place of the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

57. Withdrawal or Resignation Before Complaint Resolution

A. Students

Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the Resolution Process typically ends with dismissal, as the College has lost primary disciplinary jurisdiction over the withdrawn student. However, the College may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged sexual harassment and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the College in any capacity.

Admissions and Human Resources will be notified, accordingly. Such exclusion applies to all College locations.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to RVCC unless and until all sanctions, if any, have been satisfied.

B. Employees:

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as the College has lost primary disciplinary jurisdiction over the resigned employee. However, the College may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged sexual harassment and/or retaliation.

Regardless of whether the complaint matter is dismissed or pursued to completion of the Resolution Process, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for academic admission or rehire with the College or any RVCC location, and the records retained by the Title IX Coordinator will reflect that status.

All College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

58. Appeals

Any party may submit a written request for appeal ("Request for Appeal") to the Title IX Coordinator within 5 business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will Chair the appeal. No Appeal Decision-maker will have been previously involved in the Resolution Process for the complaint, including in any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is

not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

A. Grounds for Appeal

Appeals are limited to the following grounds:

1) A procedural irregularity affected the outcome of the matter
2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, within 5 business days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses will be

shared with the Appeal Chair, and the Chair will render a decision within no more than 5 business days, barring exigent circumstances. All decisions apply the preponderance of the evidence.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' RVCC-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

B. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed (i.e.: not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then the emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation. If the original sanctions include separation in any form, the College may place a hold on official transcripts, diplomas, graduations, course registration, etc. pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.

C. Appeal Considerations

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the

sanction(s)/responsive action(s) only if there is a compelling justification to do so.

- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where an error cannot be cured by the original Investigator(s) and/or Decision-maker(s) or the Title IX Coordinator (as in cases of bias), the Appeal Chair/Decision-maker(s) may order a new investigation and/or a new hearing with new Pool members serving in the Investigator and Decision-maker roles.
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

59. Long-Term Remedies/Other Actions

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the institutional community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees

- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies the College owes the Respondent to ensure no effective denial of educational access.

The College will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the College's ability to provide these services.

60. Failure to Comply with Sanctions and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Decision-maker(s)).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

61. Recordkeeping

RVCC will maintain for a period of seven years following the conclusion of the Resolution Process, records of:

1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation
2) Any disciplinary sanctions imposed on the Respondent

3) Any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity
4) Any appeal and the result therefrom
5) Any Informal Resolution and the result therefrom
6) All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. RVCC will make these training materials publicly available on RVCC's website. (Note: If the Recipient does not maintain a website, the Recipient must make these materials available upon request for inspection by members of the public.)
7) Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
    a. The basis for all conclusions that the response was not deliberately indifferent
    b. Any measures designed to restore or preserve equal access to the College's education program or activity
    c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances

RVCC will also maintain any and all records in accordance with state and federal laws.

62. Disability Accommodations in the Resolution Process

RVCC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the College's Resolution Process.

Anyone needing such accommodations or support should contact the Director of Center for Accessibility and Inclusive Education or Benefits Personnel, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

63. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policies addressing sexual harassment, sexual misconduct, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change–or court decisions alter–the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws or regulations or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective March 1, 2024

BASED ON THE ATIXA 2022 MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES
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