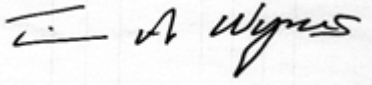


## Black Hawk College Administrative Guidelines

<b>3-1.5 Sexual Misconduct Guideline</b>	Approved by:
Insertion Date: 03.2016	
Revision Date: 06/2022	
Removal Date:	Board Policy: 5.70 and 5.72

Black Hawk College (the “College”) is committed to maintaining a respectful and professional academic and working environment for students, faculty, staff, and visitors. This includes having an environment free from unlawful sexual misconduct. This Sexual Misconduct Guideline coincides with Black Hawk College’s Guideline Against Discrimination and Harassment (AG 3-1.2) and the Violence Prevention Guideline (AG 3-1.7) and addresses the requirements of Title IX of the Education Amendments Act of 1972 (hereinafter referred to as “Title IX”), Title VII of the Civil Rights Act of 1964 (hereinafter referred to as “Title VII”), the Illinois Human Rights Act, the Clery Act, and the Violence Against Women Reauthorization Act of 2022 (hereinafter referred to as “VAWA”). This Sexual Misconduct Guideline applies to all settings and activities of the College, whether on campus property or off campus.

The Department of Education Office for Civil Rights prohibits sex discrimination in an education program or activity of the College against a person in the United States. This includes Title IX Sexual Harassment, as defined below in this Administrative Guideline. This Administrative Guideline includes processes used for all reports or complaints of sexual misconduct. Sexual misconduct that constitutes Title IX Sexual Harassment will be addressed pursuant to the College’s Title IX procedures. Nothing in this Administrative Guideline prevents the College from addressing prohibited sexual misconduct that does not trigger the College’s Title IX response obligations under other applicable policies and procedures.

The College is committed to maintaining a climate of respect and security on campus as it relates to preventing and responding to acts of sexual misconduct. Therefore, this guideline has been created and serves to demonstrate the College’s commitment to:

- Prohibiting sexual misconduct to include sexual harassment, sexual assault, sexual exploitation, stalking, dating violence, and domestic violence;
- Disseminating clear policies and procedures for responding to sexual misconduct reported to the College;
- Delivering primary prevention and awareness programs and ongoing training and education campaigns to students and employees so they may identify what behavior constitutes sexual misconduct; understand how to report such misconduct; recognize warning signs of potentially abusive behavior and ways to reduce risks; and learn about safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
- Engaging in investigative inquiry and resolution of reports that are reasonably prompt, fair, and equitable;
- Supporting complainants and respondents and holding persons accountable for established violations of this guideline; and
- Providing a written explanation of the rights and options available to every student or employee that has been the victim of domestic violence, dating violence, sexual assault or stalking.

In addition, this guideline:

1. Identifies the College's Title IX Coordinator, Deputy Title IX Coordinator, and Title IX Investigators, and describes their roles in compliance with guidance from the Department of Education's Office of Civil Rights and in compliance with the Clery Act.
2. Identifies how students and employees can report sexual misconduct to the College confidentially and what resources are available both on and off campus to aid them, including employees' and students' rights to notify local law enforcement and their right also to decline to notify such authorities.
3. Provides information about how reports are assessed, investigated, and resolved.
4. Provides the College with a means to take all reasonable steps to identify harassment, prevent recurrence of any harassment, and to correct its discriminatory effects on the complainant and others, if appropriate.

## **NOTICE OF COORDINATION WITH GUIDELINE AGAINST DISCRIMINATION AND HARASSMENT**

The College recognizes that it is important to coordinate this guideline with other existing policies related to harassment and discrimination knowing that harassment related to an individual's sex, sexual orientation, or gender expression can occur in conjunction with misconduct and harassment related to a person's race, ethnicity, national origin, religion, age, pregnancy or parenting status, disability, or other protected status as defined by federal, state or local law. Therefore, when a report is made of harassment or discrimination based on sex as well as harassment or discrimination based on some other protected status, the College will use all applicable policies respectively to address the reports and will coordinate the investigation and resolution efforts.

The College is committed to fostering a positive learning and working environment free from harassment and discrimination and does not discriminate on the basis of race, sex, national origin, religion, sexual orientation, gender identity or expression, or any other protected status. Further, the College does not discriminate on the basis of sex in any educational, employment, or extracurricular activity. Sexual misconduct, as described in this guideline, is a form of sexual harassment, which is a form of discrimination and is prohibited by Title IX of the Education Amendments of 1972. Domestic violence, dating violence and stalking also are prohibited conduct as defined by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2022 ("VAWA"). Conduct prohibited by this policy may violate other laws and College policies, including but not limited to the Guideline Against Discrimination and Harassment, Code of Conduct and the Student Handbook.

## **TITLE IX COORDINATOR & DEPUTY TITLE IX COORDINATOR/ INVESTIGATORS**

The College has designated a Title IX Coordinator who is responsible for the oversight of this guideline and any procedures related to it. The Title IX Coordinator is responsible for overseeing and resolving all Title IX reports and identifying and addressing any patterns or systemic problems that arise during the review of such reports. The Coordinator's responsibilities include oversight of a reasonably prompt, fair, and equitable investigation and resolution process for reports of sexual misconduct at the College. The Title IX Coordinator also evaluates trends on campus by using information reported to them and makes recommendations for campus wide training and education programs.

The Deputy Title IX Coordinators serve as designees for the Title IX Coordinator in any case where the Title IX Coordinator is not available, there is a conflict of interest, where either a complainant or respondent has identified a conflict of interest in his/her case with the Title IX Coordinator, or where the Title IX Coordinator deems it otherwise necessary or appropriate to assign a complaint to the Deputy for conducting an investigation. The Title

IX Investigator conducts thorough and impartial investigations into the facts of a case including interviewing the complainant, respondent, witnesses or others who may have relevant information, and collecting any other evidence deemed relevant to a case. Name and contact information for the Title IX Coordinator and Deputy Title IX Coordinators is located at the end of this document.

The Title IX Coordinator should be contacted for anyone looking to:

1. Get information or training about rights, available actions to resolve reports or complaints involving potential sex discrimination or the process to do so.
2. Get information about available College resources (including confidential resources) and supportive measures related to Title IX sexual harassment or other conduct prohibited by this Administrative Guideline.
3. Notify the College of an incident, policy or procedure that may involve Title IX issues or concerns.
4. File a formal complaint or make a report of sex discrimination, including Title IX sexual harassment or other conduct prohibited by this Administrative Guideline.
5. Ask questions about the College's policies and procedures related to sex discrimination, sexual harassment or other conduct prohibited by this Administrative Guideline.

## **DEFINITIONS**

The terms, as they are used and intended to be interpreted in this Guideline, are defined below.

**COERCION:** The use of pressure and/or oppressive behavior which places an individual in fear of immediate or future harm or physical injury and/or causes a person to engage in unwelcome sexual activity.

**COMPLAINANT:** An individual who is alleged to be the victim of sexual misconduct under this Policy.

**CONSENT:** Consent to engage in sexual activity must be informed, freely given and mutual. Consent is clear, knowing, and voluntary, expressed in mutually understandable words or actions that indicate a willingness to participate in a mutually agreed upon, specific sexual act. Consent must be ongoing, throughout each instance of sexual activity and for each form of sexual contact. Consent to one form of sexual contact does not constitute consent to all forms of sexual contact. Consent cannot be inferred from the absence of a "no." In the State of Illinois, consent can never be given by minors under the age of 17. Consent can be withdrawn at any time.

**What constitutes lack of consent?** Consent cannot be inferred through silence or lack of resistance. Consent to one activity does not constitute consent to other sexual acts. Past sexual activity does not constitute consent for future acts. If at any time consent is uncertain, the initiating party should stop and obtain verbal consent. The use of any force, coercion, threat, or intimidation negates consent. Consent also is not present if someone is incapacitated by alcohol or drugs (legal or illegal).

Individuals who are incapacitated cannot consent to sexual activity. Incapacitation that renders a person mentally or physically helpless may result from intoxication, passing out, being asleep, or a mental illness or other mental condition that renders the person incapable of understanding the nature of his or her conduct.

When incapacitation occurs because of alcohol or drug use, some indicators of incapacitation may include:

- Slurred speech;
- Bloodshot or unfocused eyes;

- Needing assistance to walk/stand;
- Vomiting;
- Outrageous or unusual behavior;
- Concern expressed by others about the individual; or
- Expressed memory loss or disorientation

An individual also may be in a state known as a “blackout” when she or he is incapacitated and likely will have no memory of the sexual activity, but may still be walking and talking. Therefore, it is particularly important that people engaging in sexual activity know each person’s level of intoxication or impairment before beginning sexual activity. For purposes of this guideline, the standard that shall be applied is whether or not a reasonable person would have known, based on the facts and circumstances presented, that the other person was incapacitated and therefore, not capable of giving consent. A respondent cannot claim that being under the influence of alcohol or drugs is a defense or excuse for engaging in sexual misconduct.

### **CONSENSUAL RELATIONSHIPS:**

This Sexual Misconduct Guideline’s treatment of “consensual relationships” is consistent with the College’s Guideline Against Discrimination and Harassment. Therefore, one or both of the aforementioned guidelines may be applicable in a given situation.

A sexual or romantic relationship between an employee and a student or between two employees creates a conflict of interest when one of the individuals has direct evaluative authority over the other. Voluntary consent to a relationship of this nature is inherently suspect given the dynamics of the relationship. Therefore, it is a violation of this Guideline for a faculty member to have a sexual or romantic relationship with a student enrolled in a course being taught by the faculty member or whose work that faculty member supervises. In addition, it is a violation of this Guideline for an employee to have a sexual or romantic relationship with another employee over whom he or she has direct supervision or evaluative responsibilities.

If a supervisory or faculty-student relationship exists between husband and wife or those in a preexisting romantic relationship, the faculty member or supervisor must notify his or her supervisor immediately so that appropriate arrangements can be made.

The College strongly discourages romantic or sexual relationships between an employee and his or her manager, between junior and senior faculty members, between faculty members and students, and between administrators/staff and students. In these circumstances, even when both parties have consented, the relationship can give rise to problems that compromise the professional integrity of staff and faculty, and may generate charges of unfair treatment or of sexual harassment.

Sexual or romantic relationships with students are particularly problematic. The College agrees with the American Association of University Professors statement:

*Sexual relations between students and faculty members with whom they also have an academic or evaluative relationship are fraught with the potential for exploitation. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an academic or evaluative role, make voluntary consent by the student suspect. Even when both parties initially have consented, the development of a sexual relationship renders both the faculty member and the institution vulnerable to*

*possible later allegations of sexual harassment in light of the significant power differential that exists between faculty members and students.*

The College views romantic or sexual relationships between employees and their managers, between junior and senior faculty members, and between administrators and students in the same light; these relationships are also characterized by significant power differentials and are subject to the same liabilities.

If you are engaged in a romantic or sexual relationship with someone whom you instruct, supervise, evaluate, or advise, it is your professional responsibility to advise your Supervisor or Human Resources of that relationship so that your Supervisor or HR can discuss and assess the situation with you to determine whether it is appropriate to make changes to the instructional, advisory, evaluative, or supervisory relationship. Information disclosed in these discussions shall be treated as confidential, and disclosure to others shall be made only on a need-to-know basis.

Please note: In the event you are the subject of a report of sexual harassment and if the facts show that you were engaged in a romantic or sexual relationship with someone whom you instructed, supervised, evaluated or advised, and you did not advise your Supervisor or HR of the existence of that relationship so that steps could have been taken to change, if appropriate or necessary, the instructional, advisory, evaluative, or supervisory relationship, the College may decline to assist you in your legal defense against the allegation(s), and you, not the College, may bear any litigation costs or fees associated with your legal defense. In addition, you may face disciplinary action, up to and including termination, for any substantiated misconduct resulting from such relationship.

**DATING VIOLENCE:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship will be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

Dating violence includes the use or threat of physical force or restraint carried out with the intent of causing pain or injury to another within a dating relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include conduct or acts covered under the definition of Domestic Violence (defined herein).

Examples of behavior that may constitute dating violence include the following:

- Taking away a person's cell phone during an argument so the person cannot call a friend or the police for help
- Battering that causes bodily injury
- Threatening to commit self-harm if another does not do what is asked
- Threatening to physically assault someone the individual is dating if the person does not do what is asked
- Purposely or knowingly causing reasonable apprehension of bodily injury

**DOMESTIC VIOLENCE:** Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person cohabitating with or having cohabitated with the victim as a spouse, by a person similarly-situated to a spouse of the alleged victim or any other person against a victim who is protected from that person's acts under the domestic or family violence laws of the State of Illinois.

Examples of behavior that may constitute domestic violence include the following:

- Hitting, punching, pinching, slapping, or choking someone with whom the person is intimately involved
- Violating a protective order
- Harming a person's animals or children while in an intimate relationship

**EDUCATION PROGRAM/ACTIVITY:** locations, events or circumstances over which the College exercises substantial control over both the Respondent (as defined herein) and the context in which the alleged misconduct occurred. This includes any building owned or controlled by the College.

**FERPA:** The Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99.

**FORCE:** Includes physical acts, coercion, threats, and intimidation.

**FORMAL TITLE IX COMPLAINT:** means a document filed by a complainant (as defined herein) or signed by the Title IX Coordinator alleging sexual harassment against a respondent (as defined herein) and requesting that the College investigate the allegations of Title IX sexual harassment. A "document filed by a complainant" means a document or electronic submission (such as electronic mail) that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint.

**IMPAIRMENT:** The state of being diminished or weakened due to the consumption of a substance.

**INTIMIDATION:** An expression through words or acts that imply a threat of imminent bodily harm or injury.

**PHYSICAL FORCE:** Includes hitting, pushing, holding, pinching, leaning on, obstructing an entrance or exit, or carrying away. Physical force also includes the use or display of a weapon.

**PREPONDERANCE OF THE EVIDENCE:** A standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence which is offered in opposition to it; given the totality of information the version of events that is more likely than not. Preponderance of the evidence is understood to require more than 50 percent certainty to determine guilt (51% or greater).

**REPORT OF TITLE IX SEXUAL HARASSMENT:** a communication, by any means, to the Title IX Coordinator alleging Title IX Sexual Harassment has occurred. A report can be filed by anyone, including but not limited to the complainant, and can take any form including but not limited to verbal, written or electronic format.

**RESPONDENT/ACCUSED:** an individual who has been reported to be the perpetrator of conduct that could violate this Administrative Guideline.

**RETALIATION:** The taking of an adverse action against a complainant or other participant in proceedings under this Guideline because of his/her opposition to unlawful discrimination or participation in a complaint.

**SEXUAL ASSAULT:** An offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual assault includes any conduct defined as such by state or federal law, including but not limited to the following acts conducted without the consent of the victim:

- **Non-consensual Sexual Contact (or attempts to commit)** defined as any intentional sexual touching of the private body parts of another person for the purpose of sexual gratification.
- **Non-consensual Sexual Intercourse (or attempts to commit)** defined as penetration, no matter how slight, of a person's vagina, anus or mouth with any object(s) or body part that is without consent and/or by force

Examples of behavior that would constitute sexual assault include the following:

- Engaging in sexual activity with an unconscious or semi-conscious person;
- Engaging in sexual activity with someone who is asleep or passed out;
- Engaging in sexual activity with someone who has said "no";
- Engaging in sexual activity with someone who is not reciprocating by body movement;
- Engaging in sexual activity with someone who is vomiting, unable to stand without assistance, or has to be carried to bed;
- Allowing another person to engage in sexual activity with your partner without his or her consent;
- Requiring any person to perform any sexual activity as a condition of acceptance into a fraternity, sorority, athletic, or any other organization affiliated with the College;
- Telling someone you will "out" them if they don't engage in sexual activity (e.g., threatening to disclose the person's sexual orientation without their consent);
- Telling someone you will fail them or give them a grade different from what they deserve if they don't agree to engage in sexual activity; or
- Facilitating or assisting in a sexual assault including purchasing or providing alcohol or drugs to further a sexual assault.

**SEXUAL EXPLOITATION:** Occurs when a person takes advantage of another without that individual's consent for the initiator's own advantage or benefit or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

Examples of behavior that would constitute sexual exploitation include the following:

- Prostituting another;
- Allowing a third party to watch consensual sexual contact without the permission of both parties involved in the sex act or showing voluntarily recorded sexual activity to others without permission;
- Knowingly giving another a sexually transmitted infection (STI) or HIV; or
- Allowing others to have sex with an incapacitated person.

**SEXUAL HARASSMENT:** Unwelcome conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment and/or educational opportunities, evaluation or status at the College; (2) submission to or rejection of such conduct by an individual is used or may be used as the basis for tangible employment or educational decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or educational environment.

Hostile environment sexual harassment is unwelcome sexual conduct that is sufficiently severe and pervasive and objectively offensive that it alters the conditions of education or employment and creates an environment that a reasonable person would find intimidating, hostile, uncomfortable, or inappropriate. The determination of whether an environment is “hostile” must be based on all of the circumstances and not based on the intent of the offender. These circumstances could include the frequency of the conduct, its severity, and whether it is threatening or humiliating.

### **EXAMPLES OF SEXUAL HARASSMENT**

Sexual harassment can range from unwelcome sexual flirtation to sexual assault. The following is a list of examples of conduct that may violate this Guideline:

1. physical assault;
2. direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation;
3. direct proposition of a sexual nature;
4. subtle pressure for sexual activity;
5. idle chatter of a sexual nature and graphic sexual descriptions;
6. offensive “risqué” jokes or “jesting” and “kidding” about sex or gender specific traits;
7. comments or questions about the sensuality of a person, or his or her spouse or significant other;
8. inappropriate touching, patting, hugging, or brushing against a person’s body;
9. sexual slurs, sexual innuendos, and other comments about a person’s clothing, body, and/or sexual activities;
10. displaying objects or pictures which are sexual in nature and which may create a hostile or offensive work environment;
11. unwelcome attempts to change a professional or academic relationship into a personal one;
12. telephone calls of a sexual nature, by an employee or student to an employee’s or student’s residence;

- ***Note: This list is not an exhaustive list.***

**SEXUAL MISCONDUCT:** A broad term that identifies forms of discrimination and harassment based on sex including, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, and stalking. Sexual misconduct includes other acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

**STALKING:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress. For purposes of this Administrative Guideline,

- course of conduct means two or more acts, including but not limited to, acts which the stalker directly, indirectly or through third parties, by any action, 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 victim; and



- substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Examples of behavior that could constitute stalking include the following:

- Spreading lies about a person;
- Repeatedly communicating with a person who doesn't wish to be communicated with;
- Following a person or lying in wait for another; or
- Sending unwanted gifts to another.

**STUDENT:** An individual will be considered an enrolled student if the following conditions are met: 1) The student is pre-registered for courses for a particular term or session; and 2) The student's attendance in at least one class has been verified. Prior to the beginning of classes, preregistered students are considered enrolled. After classes begin, students need to be attending classes in order to maintain their enrollment status.

**SUPPORTIVE MEASURES:** non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

**THREAT:** An expression through words or acts of intent to inflict harm or other negative consequences.

**TITLE IX SEXUAL HARASSMENT: Conduct on the basis of sex that meets one or more of the following definitions:**

1. **Quid Pro Quo Sexual Harassment:** a College employee conditioning the provision of an aid, benefit or service of the College on an individual's participation in unwelcome sexual conduct;
2. **Hostile Environment Sexual Harassment:** unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. **Sexual Assault** (as defined herein)
4. **Dating Violence** (as defined herein)
5. **Domestic Violence** (as defined herein)
6. **Stalking** (as defined herein)

**UNWELCOME SEXUAL, SEX OR GENDER-BASED CONDUCT:** means any unwelcome sexual, sex-based or gender-based conduct occurring within or having an adverse impact on the workplace or academic environment, regardless of how it is conducted (physically, verbally, in writing or via an electronic medium) and regardless of the sexes or genders of the individuals involved. This type of misconduct may come in three forms, each of which may also qualify as Title IX Sexual Harassment or violate other College policies. This includes:

1. **Gender-Based or Sexual Hostility:** objectively offensive treatment of another person or group, through words or conduct, with hostility, objectification, exclusion or as having inferior status based on sex, gender or sexual orientation.
2. **Unwanted Sexual Attention:** objectively offensive sexual attention, advances or comments that a person reasonable should know are unwanted or which continue to occur or persist after the recipient has communicated a desire that the behavior stop.
3. **Sexual Coercion:** use of force, violence, threats or other threats of harm by an individual to compel or attempt to compel another individual to engage in unwelcome sexual activity.

## **CONFIDENTIALITY**

Only State of Illinois licensed counselors and health care providers (acting in that capacity) are designated confidential resources. Students and employees who do not wish to disclose to the College a complaint of sexual misconduct should utilize the health and counseling services offered either on campus or off campus in the community where their confidentiality may be protected. Please see pages 22-23 of this Guideline for a list of Resources.

If the complainant reports to the College and requests confidentiality or asks that the report not be pursued, the College will take all reasonable steps to investigate and respond to the report consistent with the request for confidentiality or request not to pursue an investigation. If the report alleges Title IX Sexual Harassment, the College will follow the Title IX Grievance Procedures below. If a complainant insists that his/her name or other identifiable information not be disclosed to the respondent, the College's ability to respond may be limited. If the complainant continues to ask that his or her name not be revealed, the College will take all reasonable steps to investigate and respond to the report consistent with the respondent's request as long as doing so does not prevent the College from responding effectively to the harassment and preventing harassment of other members of the College community. At the same time, the College will evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all persons. It is a violation of the College guideline to retaliate against an individual making a report or providing information for an investigation.

Education records are maintained in accordance with FERPA. All documentation related to a student's report, complaint, investigation, and resolution are protected by FERPA and will not be released, except as required by law or as identified in this Administrative Guideline. Nonidentifying information about a report may be shared with the Campus Police Chief or designee to comply with the Clery Act. A complainant's name never will be published in connection with the College's obligations under the Clery Act. In addition, the College does not publish identifiable information regarding victims in the College's Daily Crime Log or online. In addition, any person including a victim of sexual misconduct, domestic or dating violence, or stalking may request that her or his directory information on file be removed from public sources. To request removal of directory information, employees should contact HR and students should contact the Registrar.

Public awareness events such as candlelight vigils, protests, "survivor speak outs," or other forums in which students, staff, or faculty members disclose incidents of sexual misconduct, are not considered a report or complaint of sexual misconduct or notice to the College of sexual misconduct for purposes of triggering the College's obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the College may provide information about Title IX and Clery rights at these events.

## **REPORTING**

Any person who believes she/he has been the subject of discrimination or harassment due to sex (sexual misconduct) or who is aware of a member of the College community who has been subject to discrimination or harassment as defined by Title IX, is strongly encouraged to contact the Title IX Coordinator (contact information listed on page 23) or the Director of Human Resources.

A formal complaint of sexual misconduct is a written document filed by a complainant or signed by a Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the alleged harassment.

**All Title IX Responsible Employees, including faculty, staff, and volunteers on campus who work with students or minors, and every person identified as a Campus Security Authority (CSA) under the Clery Act must report to the Title IX Coordinator any sexual misconduct reported to them or observed by them, including the name of the complainant and respondent, if known. The only College individuals that are exempt from reporting sexual abuse of an adult are State of Illinois licensed counselors and medical staff and members of the Clergy engaged in pastoral counseling. The College requires everyone in the campus community to report the suspected abuse of children (those under the age of 18) and, as per applicable law, Licensed Professional Counselors are required to report the suspected abuse of children.**

The obligation of a College employee to report Title IX Sexual Harassment or inform a student about how to report Title IX Sexual Harassment, including anyone who is trained on such, does not qualify that employee as one who has authority to institute corrective measures on behalf of the College.

Upon receipt of a report, the College will inform individuals of their right to file criminal charges as well as the availability of medical, counseling and support services, and additional interim measures to prevent contact between a complainant and a respondent, such as academic, transportation and working accommodations, if reasonably available and appropriate under the circumstances.

After an incident of sexual assault, domestic violence, or dating violence, the victim should consider seeking medical attention as soon as possible at the closest emergency room. Victims who agree to have forensic evidence collection conducted as part of their care can locate hospitals with such emergency rooms or can call Campus Police or 911. Please see the *Resources* section of this guideline on Pages 22-23 for more information regarding hospitals and Campus Police contact information.

## **JURISDICTION & REPORTING TIMEFRAMES FOR NON-TITLE IX COMPLAINTS**

Because sexual misconduct that occurs off campus may impact a person's work, academic, or extracurricular experience, the College may assume jurisdiction to adjudicate off campus reports of sexual misconduct should circumstances warrant. In addition, the College encourages prompt reporting of sexual misconduct so that the College can respond promptly and equitably; however, the College does not limit the timeframe for reporting. If the respondent is no longer affiliated with the College at the time the report is made, then the College will determine whether circumstances warrant an investigation.

## **WHAT TO DO IF YOU ARE SEXUALLY ASSAULTED**

Individuals are encouraged to report potential crimes of sexual assault to law enforcement in addition to the Title IX Coordinator. It is important to preserve evidence to the highest extent possible. The Title IX Coordinator and the Deputy Title IX Coordinators are available to assist an individual in notifying law enforcement. Criminal and College investigations are separate and may be conducted simultaneously. The College will not wait for the completion of a criminal investigation in order to respond.

If you have been the victim of sexual assault, domestic violence, dating violence, or stalking, you should report the incident promptly to the Title IX Coordinator and to the Campus Police Chief or designee (if you so desire). The College will provide resources to any person who has been a victim of sexual assault, domestic violence, dating violence, or stalking, and will apply appropriate disciplinary procedures to those who violate this guideline. The procedures set forth below afford a prompt response to reports of sexual assault, domestic or dating violence, and stalking, maintain confidentiality and fairness consistent with applicable legal requirements, and impose appropriate sanctions on violators of this guideline.

After an incident of sexual assault, the complainant should consider seeking medical attention as soon as possible at a local emergency room such as Trinity Hospital in Moline or Genesis Hospital (Illini campus) in Silvis to preserve evidence in case the complainant decides to file a police report. As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more difficult. If a victim chooses not to make a report regarding an incident, he or she nevertheless should consider speaking with the Chief of Police or local law enforcement to preserve evidence in the event that she/he changes her/his mind at a later time.

Anonymous reports also are accepted and should be directed to the Title IX Coordinator. The supplier of an anonymous report should be mindful that failure to disclose identifying information about the respondent, the victim of the misconduct, or the facts and circumstances regarding the misconduct severely limits the College's ability to respond to, address, and remedy the effects of sexual misconduct. Anonymous reports that provide enough information to constitute a criminal offense will be reported to the Campus Police Chief or designee without identifying information regarding the complainant for purposes of inclusion in the College's Annual Security Report and to determine whether the College should send a Timely Warning.

It is important that a victim of sexual assault not bathe, douche, smoke, change clothing or clean the bed/linen/area where she or he was assaulted if the offense occurred within the past 96 hours so that evidence as may be preserved. In circumstances of sexual assault, if a complainant does not opt for forensic evidence collection, health care providers still can treat injuries and take steps to address concerns of pregnancy and/or sexually-transmitted disease. Complainants of sexual assault, domestic violence, dating violence, or stalking also are encouraged to preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if any exist that may be useful to College investigators or campus or local police.

Although the College strongly encourages all members of its community to report violations of this guideline that also may be criminal sex offenses to law enforcement, it is the complainant's choice whether to make such a report and complainants have the right to decline involvement with the police.

**IMPORTANT:** Victims under the age of 18 that file a report with campus police will be deemed a child in need and the appropriate authorities will make a decision of whether to pursue charges.

Additionally, personally identifiable information about the complainant will be treated as confidential and only shared with persons who have a specific need to know and who are investigating/adjudicating the report or delivering resources or support services to the complainant. Further, the College will maintain as confidential, any accommodations or protective measures provided to the complainant to the extent that maintaining such confidentiality would not impair the College's ability to provide the accommodations or protective measures.

Complainants may request that directory information on file be removed from public sources by contacting the Title IX Investigator at [kochj@bhc.edu](mailto:kochj@bhc.edu) or 309-796-5177 or by contacting Enrollment Services directly.

#### **Overview of Steps to Take if You Are Sexually Assaulted:**

- Get to a safe place. (For example: a friend's home, the nearest hospital or police department)
- Call 911 and ask to be taken to the emergency room for medical care and/or for immediate police protection and assistance. A complete medical evaluation will include a physical examination,

treatment, evidence collection and/or counseling. You may decline any or all of the parts of the evaluation process. Remember – you will not be made to do anything you do not want to do.

- When you call 911, explain what has happened and request to be sent to an emergency department that has a Sexual Assault Nurse Examiner.
- If you have been raped, it is important that you seek medical care right away, especially if you have been physically injured. Even if you do not have any visible physical injuries from the assault, there may be physical injuries that you cannot see, and medical and health centers can provide additional services.
- Do not change clothes, bathe, douche or brush your teeth prior to seeking medical care or an evaluation. This is important for the evidence collection process that will occur at the hospital. It is best for evidence collection to take place within 72-96 hours of the assault.
- Go directly to the nearest Emergency Room.

## **COLLEGE ALCOHOL & DRUG AMNESTY**

Alcohol and other drugs amnesty is intended to encourage students to seek assistance for themselves or someone else by reducing fear of violating the College's Student Code of Conduct for other misconduct. It is an attempt to remove barriers that prevent students from seeking the medical attention or other assistance that they need when sexual misconduct has occurred.

This guideline does not necessarily grant amnesty for criminal, civil or legal consequences for violations of federal, state or local laws. Campus Police are sworn police officers with full arrest authority and, in some circumstances, they have discretion to exercise that authority as circumstances dictate according to their training and professional experience. However, the health and safety of the College community is a primary concern and this guideline may provide amnesty for students from violations of the College's Student Code of Conduct where alcohol and/or other drug use is evidenced if granted by the Title IX Coordinator.

## **ORDERS OF PROTECTION & NO CONTACT ORDERS**

If a member of the College community is accused of violating this guideline, a no contact letter will be given to all parties involved by the College until the conclusion of the investigation, as necessary. This will prohibit communication between the parties, including contact verbally, in writing, through electronic or other technological means and through third parties. If you have been the victim of domestic or dating violence, stalking, or sexual abuse, you may also want to consider obtaining an order of protection from the State of Illinois. An order of protection is a court order signed by a judge that orders someone to stop certain behavior and stay away from someone else.

An order of protection may:

- prohibit an abuser from contacting you or others protected by the order;
- prohibit an abuser from continuing threats or abuse;
- limit an abuser's use of College facilities or other specific locations;
- require an abuser to attend counseling;
- require an abuser to relinquish possession of weapons and turn them over to local law enforcement, in the event there is danger of illegal use against you;
- require an abuser to take other actions to protect you.

### **Ways to obtain an Order of Protection:**

- Ask your attorney to file for one in civil court.

- Request an order during a criminal trial for abuse.
- Go to your local circuit court clerk's office and get papers to seek an order of protection for yourself.
- Contact a local domestic violence program to ask for assistance in completing the forms. (See Resources on Pages 22-23 of this Guideline for more information about local programs.)

## **INTERIM MEASURES & PROTECTIVE MEASURES**

The College may take interim actions or protective measures at any point during an investigation. These actions are designed to eliminate the misconduct and prevent its recurrence. These measures may include, but are not limited to, compliance with orders of protection and no contact orders, changes in class assignment for the respondent and/or complainant, academic accommodations, changes in supervisor or work location, removal from campus facilities or grounds, social restrictions, changes in parking locations, increased security, removing a respondent from the College's education program or activity and/or emotional and other support.

## **INVESTIGATION & RESOLUTION**

The Title IX Coordinator and Deputy Title IX Coordinators are trained annually on the issues related to Title IX, sexual harassment, sexual misconduct, domestic violence, dating violence, sexual assault, and stalking and instructed on how to conduct effective investigations and administer a process that protects the safety of victims and promotes accountability. In proceedings under this guideline, the standard of proof used to determine whether or not a violation of this guideline has occurred is a preponderance of evidence, which means it is more likely than not the misconduct occurred. The College reserves the right to bring reports forward against a student or employee and to act as the complainant for purposes of this guideline. This right shall not be utilized in a manner inconsistent with Title IX.

Upon notice of a potential violation of this Guideline, the Title IX Coordinator or respective Deputy Title IX Coordinator will conduct an assessment to determine if the complaint constitutes a potential violation of the College's policy/procedures/guidelines. If it does not, the complaint will be dismissed or referred to another department as necessary under the circumstances. If the complaint could constitute a violation of this Guideline, a fair and impartial investigation will be conducted by the Title IX Investigator or other trained College staff or faculty member pursuant to the Title IX Grievance Procedures and Non-Title IX Grievances Procedures outlined below. The College reserves the right to employ and utilize neutral, third-party investigators outside the College community if it determines that the investigation would be best conducted in this way.

The investigation will typically include interviewing all parties, including the accused, the complainant and any witnesses. The investigation will also include collecting any documentation or other evidence relevant to the allegations contained in the complaint. The complaint and investigation process are discussed in more detail below.

## **TITLE IX GRIEVANCE PROCEDURES**

The following Title IX Grievance Procedure applies to reports submitted or complaints filed by an individual participating or attempting to participate in an education program or activity alleging Title IX sexual harassment in a College education program or activity. The respondent must be a College employee or student for this Grievance Procedure to apply. All other, non-Title IX sexual misconduct shall be handled through the Non-Title IX Grievance Procedure identified herein.

### **A. SUPPORTIVE MEASURES**

All complainants and respondents will be offered supportive measures when required by Title IX. The Title IX Coordinator will have the following responsibilities with regard to supportive measures for Title IX sexual harassment allegations:

1. Promptly contact the complainant to discuss the availability of supportive measures;
2. Consider the complainant's wishes with respect to supportive measures;
3. Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
4. Explain to the complainant the process for filing a formal complaint.

Supportive measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment or deter sexual harassment. Supportive measures may include things such as counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work, leaves of absence, increased security and monitoring of certain areas on campus and other similar measures.

The College will keep any supportive measures provided to the complainant or respondent confidential to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. If a party is under the age of 18, a parent or legal guardian will be contacted and involved in conversations regarding supportive measures.

## **B. COMPLAINANT'S REQUEST TO REMAIN ANONYMOUS**

The College will make every effort to protect the privacy interests of the people involved in a complaint while balancing the need for a thorough review of a report or formal complaint. If a complainant requests that his/her name or other identifiable information not be shared, the Title IX Coordinator shall evaluate such request in light of the duty to ensure the safety of the College and to comply with state and federal law. The Title IX Coordinator or Investigator will notify the Complainant of the University's response to their request.

If the College grants a request to remain anonymous, the College cannot proceed with a Formal or Informal Resolution process. The College will then take other appropriate steps to eliminate any such Title IX sexual harassment, prevent its recurrence and remedy its effects on the complainant and the College community.

If the College is unable to grant a request to remain anonymous, the Title IX Coordinator will sign the Formal Complaint. If a Formal Complaint is signed by the Title IX Coordinator, the Title IX Coordinator does not become a party to the complaint. The Complainant may decide the degree of involvement he/she has with the process and will retain his/her rights as a Complainant regardless of the level of participation chosen. If a complainant chooses not to participate at all, their Advisor of Choice may act as a proxy for the complainant during the Title IX Hearing. If the Complainant does not have an Advisor of Choice and the matter proceeds to hearing, the College-appointed Hearing Advisor will cross examine the respondent and witnesses at the hearing.

## **C. COMPLAINANT'S REQUEST THAT THE COLLEGE TAKE NO ACTION.**

The College will make every effort to protect the privacy interests of the people involved in a complaint while balancing the need for a thorough review of a report or formal complaint. If a complainant requests that the College take no action on the complaint, does not wish for an investigation to take place or does not want a Formal

Complaint to be pursued, the Title IX Coordinator shall evaluate such request in light of the duty to ensure the safety of the College and to comply with state and federal law. The Title IX Coordinator or Investigator will notify the Complainant of the University's response to their request.

The Title IX Coordinator determines whether the College proceeds when a complainant does not wish to do so and may sign a Formal Complaint to initiate a grievance process upon completion of an initial assessment.

If the College grants a request to remain anonymous, the College cannot proceed with a Formal or Informal Resolution process. The College will then take other appropriate steps to eliminate any such Title IX sexual harassment, prevent its recurrence and remedy its effects on the complainant and the College community.

If the College is unable to grant a request to remain anonymous, the Title IX Coordinator will sign the Formal Complaint. If a Formal Complaint is signed by the Title IX Coordinator, the Title IX Coordinator does not become a party to the complaint. The Complainant may decide the degree of involvement he/she has with the process and will retain his/her rights as a Complainant regardless of the level of participation chosen. If a complainant chooses not to participate at all, their Advisor of Choice may act as a proxy for the complainant during the Title IX Hearing. If the Complainant does not have an Advisor of Choice and the matter proceeds to hearing, the College-appointed Hearing Advisor will cross examine the respondent and witnesses at the hearing.

## **D. COMPLAINT RESOLUTION PROCESS**

### **1. Initial Assessment**

Upon receipt of a Title IX Report or Formal Complaint, the Title IX Coordinator or his/her designee will conduct an initial assessment of the allegations. This will include the Title IX Coordinator or his/her designee working with a complainant to determine whether the complainant prefers a supportive and remedial response, an informal resolution, and/or a formal investigation and grievance process. The Title IX Coordinator or his/her designee may involve any other College personnel deemed necessary to assess the risk of any potential violence, danger or safety concerns.

The Title IX Coordinator or his/her designee may remove a student respondent from his/her education program or activity on an emergency basis when:

- The College makes an individualized safety and risk analysis,
- Determines that an immediate threat to the physical health or safety of any student or other individual arises from the allegations of sexual harassment justifies removal, and
- The College provides the student Respondent with notice and an opportunity to challenge the decision immediately following the removal.

### **2. Informal Resolution Process**

The Informal Resolution Process cannot be offered unless a Formal Complaint alleging Title IX Sexual Harassment has been filed. The College will not require the parties to participate in an Informal Resolution Process. It is a voluntary option that may be chosen in response to a Formal Complaint when all parties (both the complainant and the respondent) give their voluntary, written consent to engage in such. The Informal Resolution Process can begin:

- at any time after a Formal Complaint has been filed and

- prior to a determination regarding responsibility.



The College will facilitate an Informal Resolution Process if:

- An Informal Complaint alleging Title IX Sexual Harassment has been filed,
- All parties have voluntarily consented to the Informal Resolution Process in writing, and
- The Formal Complaint does not involve allegations that an employee sexually harassed a student.

The Informal Resolution Process, which does not involve a full investigation and determination on responsibility, will include the College:

1. Obtaining the parties' voluntary, written consent to the Informal Resolution Process, 2. Providing the parties written notice disclosing:
  - a. The allegations
  - b. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations,
  - c. Each party's right to withdraw from the Informal Resolution Process prior to agreeing on a resolution and resume the grievance process,
  - d. Consequences resulting from participating in the Informal Resolution Process, including the records that will be maintained or could be shared.
3. Confirming in writing the outcome of the Informal Resolution Process.

Any agreement on a resolution through the Informal Resolution Process made by all parties may not be appealed. The College does not restrict the ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence. However, the resolution proceedings are private and all individuals who are present at any time during the Informal Resolution Process is expected to maintain the privacy of the proceedings.

### **3. Advisors of Choice**

An advisor of choice means a person chosen by a party to accompany the party to meetings related to the resolution process, to advise the party on that process and to conduct cross-examination for the party at the Hearing, if any. An advisor of choice may be any person, including but not limited to, a friend, an attorney, or a healthcare professional. Parties will be required to have an advisor of choice for the Hearing. Parties have the right to choose, but are not required to have, an advisor of choice for the initial stages of the resolution process or prior to the Hearing. The College may establish restrictions regarding the extent to which an advisor of choice may participate in the complaint resolution process and such restrictions shall apply equally to all parties involved in the matter.

A party may not select an advisor who:

- Does not have time or availability to participate,
- Has institutionally conflicting roles (i.e. a Title IX investigator assigned to the matter)

An advisor of choice may not:

- Obstruct an interview,
- Disrupt the process in any way,
- Speak unless invited to do so by the Title IX Investigator,
- Testify in their capacity as an advisor,
- Refuse to comply with College policies and procedures, or

- Refuse to comply with directives given by the Title IX Coordinator, Title IX Investigator or their designee(s).

Each party is required to inform the Title IX Investigator:

- Of their advisor of choice at least three (3) days before the date of their first meeting (or as soon as possible if a more expeditious meeting is necessary under the circumstances and allowed by the Investigator).
- Immediately if they change their Advisor of Choice at any time.
- Of their advisor of choice at least seven (7) days before the date of the Hearing.

#### **4. Evidentiary Standards**

All parties will be provided an equal opportunity to present witnesses, including fact and expert witnesses and other inculpatory and exculpatory evidence. The resolution process shall involve an objective evaluation of all relevant evidence. Credibility determinations will not be based on a person's status as a complainant, respondent or witness.

##### *Preponderance of the Evidence*

The standard of evidence to be used to determine responsibility is the preponderance of the evidence standard. This standard requires the totality of the evidence offered in support of a fact to be greater or more convincing than the evidence which is offered in opposition to it. This means that in reviewing the totality of information provided, the version of events that is more likely than not will prevail. Preponderance of the evidence is understood to require more than 50 percent certainty to determine responsibility under this Administrative Guideline (51% or greater).

##### *Limitations on Evidence*

The investigation will not consider questions and evidence about a complainant's sexual predisposition or 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
- concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

The investigation further will not require, allow, rely upon or otherwise use questions or evidence that:

- constitute or seek disclosure of information protected under a privilege recognized by state or federal law. Such privileged information may be used in the investigation if the person holding the privilege has waived the privilege.
- Are records maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity when such records are made and maintained in connection with the provision of treatment to the party. Such records and/or information may be used in the investigation if the person gives the College its voluntary, written consent to use such records and/or information for the grievance process.

##### *Burden of Proof*

The burden of proof and the burden of gathering evidence sufficient to reach a determination shall at all times remain the responsibility of the College and not the individual parties.

### *Presumption for Respondent*

During the complaint resolution process, the College presumes that the respondent is not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the grievance process.

## **5. Conflicts of Interest**

Any individual materially involved in the processing or administration of the resolution process may neither have nor demonstrate a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. This includes any individual designated by the College as a Title IX Coordinator, investigator, decisionmaker or any person designated to facilitate the informal resolution process. The ultimate decisionmakers will not be the same person as the Title IX Coordinator or the Title IX Investigator assigned to the matter.

If a party has a concern regarding a conflict of interest or bias at any point during the complaint resolution process, the party must immediately report such concern to the Title IX Coordinator, who will determine if a conflict exists and make arrangements in response as necessary. If the source of the conflict is the Title IX Coordinator, concerns should be raised with the Director of Human Resources.

## **6. Dismissal of Charges**

### *Mandatory Dismissal*

The College must dismiss a formal complaint if the conduct alleged in the formal complaint:

1. would not constitute Title IX Sexual Harassment even if proved, 2. did not occur in the College's education program or activity, or
3. did not occur against a person in the United States.

### *Discretionary Dismissal*

The College may dismiss a formal complaint or any allegations therein if:

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 or employed by the College, or
3. specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal either required or permitted above, the Title IX Coordinator must promptly send written notice of the dismissal and reasons for such dismissal simultaneously to all parties.

Dismissal of a formal complaint does not preclude action under other College policies or procedures.

## **7. Extensions during Resolution Process**

In the event any party believe they need additional time to submit documentation or participate at any stage in the complaint resolution process, the party must submit a written request for an extension of time to the Title IX Coordinator at least twenty-four (24) hours before the original deadline unless extraordinary circumstances and good cause exist.

Any request for an extension must:

- Be in writing,
- Be made at least 24-hours before the original deadline, • State the reason(s) or rationale for requesting the extension, and
- Include a proposed date by which the deadline shall be reset.

Requests for extensions will not be granted automatically. The Title IX Coordinator or his/her designee will respond in writing to all parties confirming whether the request is granted or denied. The Title IX Coordinator, Title IX Investigator or his/her designee may continue or extend deadlines as necessary to ensure a full and fair investigation and process is conducted.

## **8. Formal Grievance Process**

### **a. Notice of Investigation and Allegations**

Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice to the parties who are known.

The written Notice of Title IX Allegations will include:

1. A copy of this Administrative Guideline,
2. Notice of the allegations of Title IX Sexual Harassment, including sufficient details known at the time, such as:
  - a. The identities of the parties involved in the incident,
  - b. The conduct allegedly constituting sexual harassment,
  - c. The date and location of the incident.
3. Notice that the respondent is presumed not responsible for the conduct unless and until a determination regarding responsibility is made at the conclusion of the complaint resolution process.
4. Notice that the parties have the right to an advisor of their choice.
5. Notice that the parties have the right to inspect and review evidence during the complaint resolution process.
6. Notice that the College prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

In the event the Investigator decides to investigate allegations not included in the original Notice of Title IX allegations during the course of an investigation, the Investigator will provide notice of the additional allegations to the parties whose identities are known.

### **b. Investigation**

The College will conduct a thorough, full and fair investigation. Investigations will involve various components, including interviews with relevant parties and witnesses and gathering and reviewing available and relevant evidence. All parties will have a full and fair opportunity to provide information, documentation and witnesses, to suggest questions and to fully review and respond to all evidence on the record. Prior to completion of the investigative report, the Title IX Investigator will send each party and the party's advisor of choice, the evidence subject to inspection and review (in either electronic or hard copy format). The parties will then have ten (10) calendar days to submit a written response, which the Title IX Investigator will then consider prior to completion of the investigative report.

The Title IX Investigator will complete an investigative report that fairly summarizes relevant evidence. At least ten (10) days prior to the hearing, the Title IX Investigator will send each party and the party's advisor, if any, the investigative report (in either electronic or hard copy format) for their review and written response.

c. Hearing

A live hearing will occur at the conclusion of the complaint resolution process before the College's Advisory Committee.

At the Hearing, the Advisory Committee will:

- Allow each party's advisor to ask the other party any relevant questions and follow-up questions.
- Allow each party's advisor to ask witnesses any relevant questions and follow-up questions.
- Require that cross-examination be conducted directly, orally and in real time by the party's advisor of choice.
- Require that cross-examination and other questions asked of a party or witness be relevant to the allegations arising out of the formal complaint.
- Prohibit any party from conducted cross-examination personally.
- Exercise discretion to restrict the extent to which advisors may participate in the Hearing, including during cross-examination, as necessary.
- Require the live Hearing to be conducted with the parties located in separate rooms with technology enabling the Advisory Committee and parties to simultaneously see and hear the party or the witness answering questions.
- Determine whether a question is relevant before a complainant, respondent or witness answers a cross-examination or other question.
- Disallow irrelevant cross-examination or other questions and state the basis or decision to exclude the question as not relevant.
- Not rely on any statement of a party or witness if the party or witness refuses to submit to cross-examination at the hearing.
- Not based its entire decision regarding responsibility solely on a party's or witness's absence from the Hearing or refusal to answer cross-examination or other questions.
- Create an audio recording, audiovisual recording or transcript of the Hearing and make it available to the parties for inspection and review.

d. Determination as to Responsibility

The Advisory Committee will issue a written determination regarding responsibility to the parties simultaneously which will include:

1. Identification of the allegations potentially constituting Title IX Sexual Harassment,
2. A description of the procedural steps taken from receipt of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence and hearings held,
3. Findings of fact supporting the determination,
4. Conclusions regarding the application of the College's Student Code of Conduct to the facts;
5. A state of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent and whether remedies

designed to restore or preserve equal access to the College's education program or activity will be provided to the complainant; and

6. The College's procedures and permissible bases for the complainant and respondent to appeal.

The College's determination will become final:

- Upon expiration of the appeal deadline if no appeal is filed, or
- Upon the date that the parties receive the written determination on the appeal if an appeal is filed.

#### e. Sanctions & Remedies

Sanctions will be implemented as soon as is feasible following the date that the College's determination becomes final. Sanctions can include, but are not limited to, educational conversations, training, disciplinary action, discharge, termination, withdrawal or removal from an academic program, withdrawal or removal from an academic activity, suspension or other disciplinary measures.

Remedies will be provided to a complainant where a determination of responsibility for Title IX Sexual Harassment has been made against the Respondent. Such remedies will be provided following the complaint resolution process but before the imposition of any disciplinary or other actions that are not supportive measures are taken against the respondent. Remedies will be designed to restore or preserve equal access to the College's education programs or activities and can include the same measures identified as "supportive measures" herein. The Title IX Coordinator or his/her designee will be responsible for the effective implementation of any remedies.

The failure of any party to comply with sanctions or remedies, whether intentional or not, may result in additional sanctions/action, up to and including removal from the College.

Any sanctions imposed after the Hearing will be stayed during the appeal process. Supportive measures may be reinstated, as necessary, during the appeal process.

#### f. Appeals

A party may appeal a determination regarding responsibility or a dismissal of a formal complaint or any allegation within ten (10) days of the written determination by the Advisory Committee.

The appeal shall be made in writing to the President of the College.

#### *Grounds for Appeal*

Appeals may only be made for the following reasons:

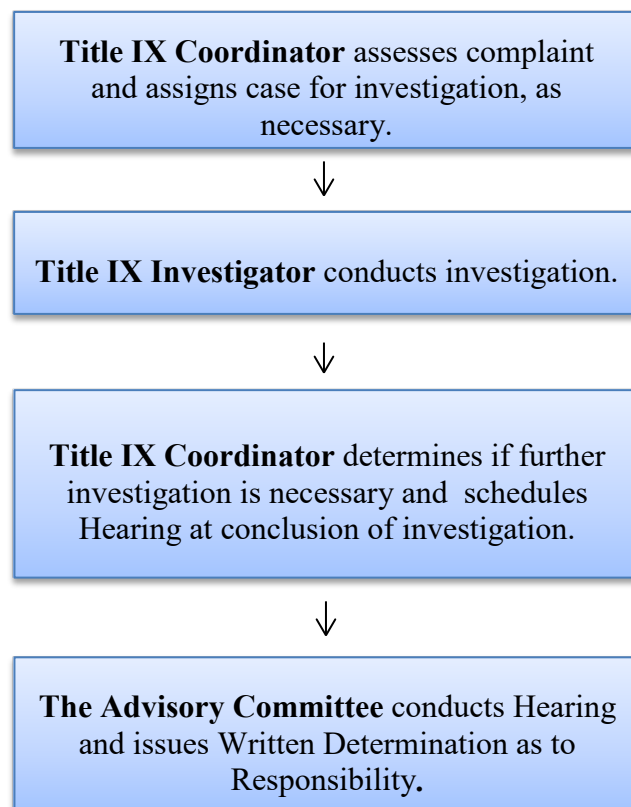
1. A procedural irregularity occurred that affected the outcome of the matter, 2. New evidence is available that:
  - a. Was not available at the time the determination regarding responsibility or dismissal was made and
  - b. Would affect the outcome of the matter.
3. The Title IX Coordinator, Investigator or Advisory Committee had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

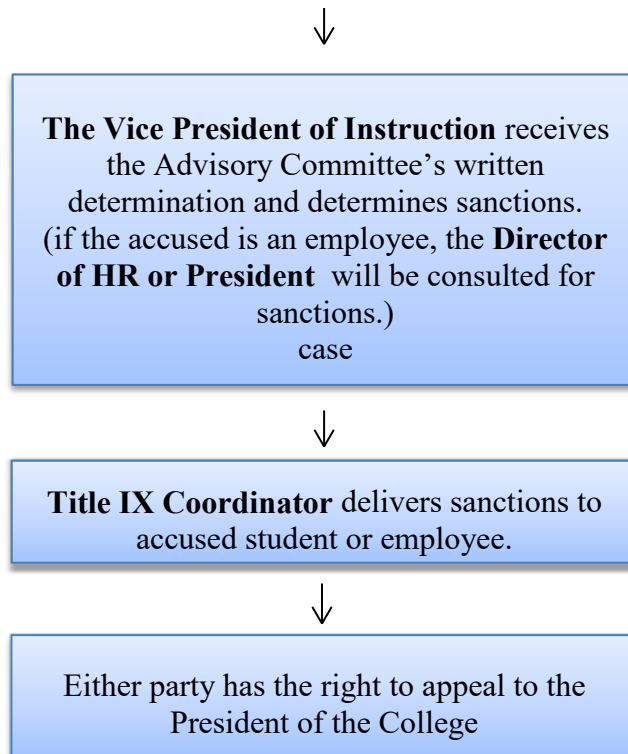
### *Appeal Process*

The Title IX Coordinator will notify all parties when an appeal is filed and will implement appeal procedures equally for both parties. Each party will have seven (7) days to submit a written statement in support of, or challenging, the outcome and determination of the Advisory Committee. The party filing the appeal must state which of the three allowed reasons for appeal (listed above) applies and provide sufficient facts, information and documentation to support such basis.

The President shall review all appeal documentation. If an appeal is not filed on one of the three grounds (listed above) or if there is insufficient facts, information or documentation provided to confirm such grounds, the President will confirm the determination of the Advisory Committee and the appeal will be denied. If sufficient grounds for appeal are established, the President will review the appeal submissions by both parties and issue a written decision to both parties within thirty (30) days. The President's determination as to responsibility shall be final.

**SUMMARY OF TITLE IX SEXUAL HARASSMENT PROCESS:** Black Hawk College reserves the right to seek counsel of the College attorney at any time in the process.





## NON-TITLE IX GRIEVANCE PROCEDURES

### INVESTIGATION PROCESS FOR NON-TITLE IX SEXUAL MISCONDUCT

- Upon receiving a report in writing, the Title IX Coordinator will assess the report.
- If the report appears upon initial assessment to be a possible violation of the Sexual Misconduct Guideline and does not allege Title IX Sexual Harassment, the Title IX Coordinator will assign the case for investigation to the Title IX Investigator or other trained investigator as appropriate. The individual assigned to and/or responsible for conducting an investigation of a complaint under this Guideline is identified as the "Investigator" for that specific complaint. If the complaint alleges Title IX Sexual Harassment, the Title IX Coordinator will follow the Title IX Grievance Procedure outlined above.
- The investigator will conduct a thorough and impartial investigation into the facts of the case and will interview the complainant, respondent, witnesses or others who may have relevant information, and collect any other evidence deemed relevant to the case.
- At the conclusion of the investigation, the investigator will determine, using a preponderance of the evidence standard, whether misconduct (as defined in this Guideline) occurred and shall prepare a report of such determination.
- In cases where the Title IX Investigator or other trained investigator is responsible for conducting the investigation of a complaint, the Investigator shall prepare a report of his/her determination and deliver it to the Title IX Coordinator. The Title IX Coordinator will then review the findings and either agree with the findings or direct the investigator to conduct further investigation.



- If the accused is an employee, the Title IX Coordinator will then present the Director of Human Resources with a determination of whether the respondent is responsible or not responsible for misconduct (as defined in this Guideline).
- If it is determined that the respondent is responsible for misconduct (as defined in this Guideline and excluding Title IX Sexual Harassment), the following will occur based on the status of the respondent as an employee or student of the College:
  - **EMPLOYEE:** If the accused is an employee of the College, the Director of Human Resources will decide on the appropriate sanction. After receiving the sanction from the Director of Human Resources, the Title IX Coordinator will issue the finding, the rationale and the associated sanctions in writing simultaneously to the complainant and respondent. The Department of Human Resources will impose the sanctions identified.
  - **STUDENT:** If the accused is a student at the College, the Vice President of Instruction will decide on the appropriate sanction. After receiving the sanction from the Vice President of Instruction, the Title IX Coordinator will issue the finding, the rationale and the associated sanctions in writing simultaneously to the complainant and respondent.
- The outcome of the investigation, the reasons for the findings, and any sanctions imposed shall be conveyed to the complainant and respondent simultaneously and in writing by both the College email system and U.S. Mail. Electronic mail may also be used.
- The complainant and the respondent have the right to appeal determinations regarding responsibility to the President of the College (see *Appeal* below).

## **FORMAL HEARING REQUEST**

Any party to a complaint alleging sexual misconduct in violation of this Administrative Guideline, other than that which qualifies as Title IX Sexual Harassment (as defined above), may file a request for a formal hearing before an Advisory Committee.

A formal hearing request is filed with the Title IX Coordinator. A request must be filed within 300 days of the alleged incident or incidents. This time period will be counted during the pendency of a timely filed informal complaint. If there is a conflict of interest, the Title IX Coordinator is unavailable, or the Title IX Coordinator is a party to the complaint the request may be made to the Director of Human Resources, who may also determine if a third-party neutral investigator is appropriate.

Upon the timely filing of a request for a formal hearing, the College will initiate a formal investigation followed by a formal hearing to determine whether a violation of this Guideline has occurred and impose appropriate disciplinary sanctions.

## **PERSONAL ADVISORS**

The complainant and the respondent each have the opportunity to be advised by a personal advisor of their choice, at their expense, at any stage of the process and to be accompanied by that advisor at any meeting or hearing in which the complainant or the respondent is required to be present. An advisor may only consult and advise his or her advisee. A personal advisor may not speak for the advisee at any meeting nor may the advisor

direct questions or submit information/documentation requests to any administrator, party, or witness in the process.

## **TIMELINE**

Typically, the investigation, resolution, and any appeal under this guideline will not exceed 60 days although the College reserves the right to exceed this timeframe in order to conduct a thorough investigation. If the investigation does or is anticipated to exceed 60 days, the College will notify the complainant and respondent in writing and will advise them of the reason for the delay and the anticipated timeframe for the completion of the investigation.

## **APPEAL**

A party may appeal a determination regarding responsibility within ten (10) days of the written determination. The appeal shall be made in writing to the President of the College.

### *Grounds for Appeal*

Appeals may only be made for the following reasons:

1. A procedural irregularity occurred that affected the outcome of the matter, 2. New evidence is available that:
  - a. Was not available at the time the determination regarding responsibility or dismissal was made and
  - b. Would affect the outcome of the matter.
3. The Title IX Coordinator, Investigator or Advisory Committee had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

### *Appeal Process*

The Title IX Coordinator will notify all parties when an appeal is filed and will implement appeal procedures equally for both parties. Each party will have seven (7) days to submit a written statement in support of, or challenging, the outcome and determination. The party filing the appeal must state which of the three allowed reasons for appeal (listed above) applies and provide sufficient facts, information and documentation to support such basis.

The President shall review all appeal documentation. If an appeal is not filed on one of the three grounds (listed above) or if there is insufficient facts, information or documentation provided to confirm such grounds, the President will confirm the determination of responsibility and the appeal will be denied. If sufficient grounds for appeal are established, the President will review the appeal submissions by both parties and issue a written decision to both parties within thirty (30) days. The President's determination as to responsibility shall be final.

## **SANCTIONS**

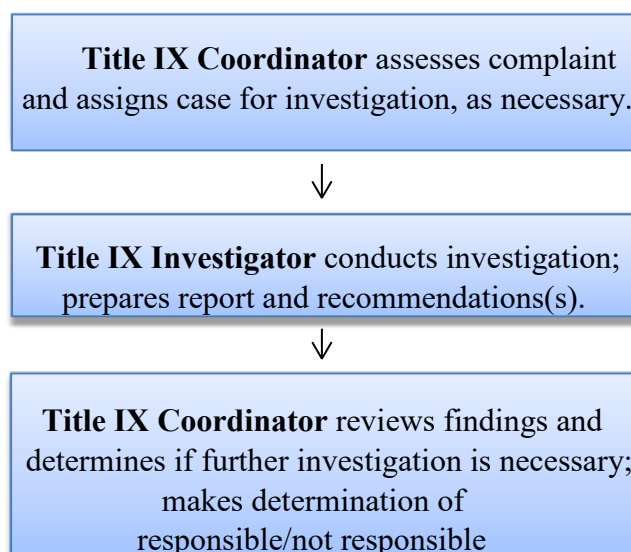
Any of the following sanctions, or combinations of sanctions, may be imposed for any Sexual Misconduct violation. Failure to abide by the imposed sanctions will result in additional charges. Disciplinary action other than those outlined below may be taken as the situation warrants and the College is in no way required to follow progressive application of the sanctions below.

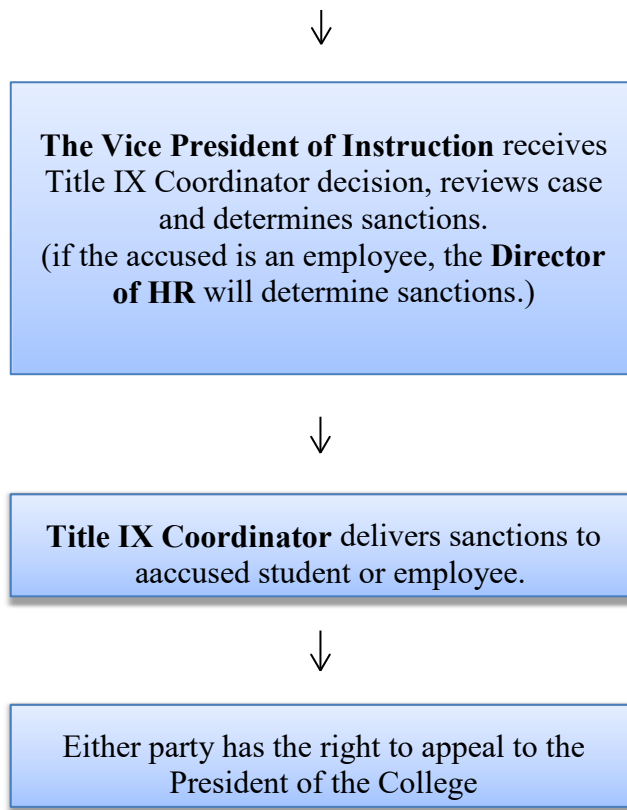
Disciplinary action will be taken in accordance with applicable collective bargaining agreements and the Student Code of Conduct.

The following is not an exhaustive list:

1. **Oral Reprimand:** An oral statement that he or she is violating or has violated institutional rules.
2. **Written Reprimand:** Notice in writing that continuation or repetition of inappropriate conduct will be cause for more severe disciplinary action.
3. **Forced Change of Campus Facility/Office Area:** Requires the movement of a student or employee from one facility or office area to another.
4. **Trespass Warning:** The student or employee is prohibited from visiting or returning to a part or all of any designated area of campus. If the individual returns, he/she is subject to arrest and additional student or employee conduct action.
5. **Evaluation by Health or Mental Health Professional:** A requirement that the accused student or employee be evaluated by a health or mental health professional (at the expense of the student/employee) and comply with any treatment recommendations prior to returning to the College (if a period of suspension is imposed) or as a condition of continued enrollment/employment at the College (if a period of suspension is not imposed);
6. **Fines:** An appropriate fine may be levied for policy/guideline violations or damages incurred.
7. **Loss of privileges:** Restricting use of or loss of campus privileges including, but not limited to, parking, athletic events, fitness/wellness programs and facilities, etc.
8. **Disciplinary Probation:** Indicates a student or employee is not in “good standing” with the College for a period not exceeding one academic year. *Note: This may result in exclusion from participation in privileged or extracurricular College activities.*
9. **Interim Suspension:** Suspension from classes, work and other privileges or activities, or from the College until resolution of the case.
10. **Suspension:** Suspension from classes, work and other privileges or activities, or from the College for a designated period of time.
11. **Expulsion/Termination of Employment:** Termination of student status (expulsion) or employee status (termination of employment) with the College.

**SUMMARY OF NON-TITLE IX SEXUAL MISCONDUCT PROCESS:** Black Hawk College reserves the right to seek counsel of the college attorney at any time in the process.





## RECORDKEEPING

The College will retain all records related to reports of sexual misconduct under this guideline for a period of seven (7) years, regardless of case outcome. The College will destroy all case records after the aforementioned retention period.

## NON-RETALIATION

Retaliation is taking of an adverse action against a complainant or other participant in proceedings under this guideline *because of* his or her opposition to unlawful discrimination or participation in a complaint, investigation, or lawsuit about discrimination. Retaliation includes acts like:

- employment actions such as termination, refusal to hire, or denial of promotion;
- other actions affecting a person's employment or academic or school-related activities such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and
- any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.

*Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, not talking to a student, or negative comments that are justified by a student or employee's poor academic or work performance or history or any other legitimate, non-discriminatory reason.*

It is unlawful and a violation of College policy/guideline to retaliate against any faculty, staff member, or student who has brought a good-faith complaint of discrimination or harassment or who has assisted in the investigation of a complaint of discrimination or harassment. Retaliation, whether actual or threatened, destroys the sense of

community and trust that is critical to a learning and work environment. The College considers acts or threats of retaliation in response to such disclosures or participation to constitute a serious violation of College policy/guideline, which may result in disciplinary action, up to and including dismissal, against the retaliator.

Retaliation occurs when an adverse action is taken against the person who has brought the complaint or assisted in a resulting investigation. It is important to note that impermissible retaliation can occur even in those circumstances where it is determined that the underlying complaint was without merit.

If you believe that you are being retaliated against because of making a report or assisting in an investigation in violation of this guideline, you should promptly report your concerns to the Title IX Coordinator or Deputy Title IX Coordinator.

## **RISK REDUCTION**

With no intent to blame complainants and in recognizing that only abusers are responsible for the abuse they perpetrate, the following are some strategies to reduce one's risk of sexual assault or harassment (from Rape, Abuse, & Incest National Network, [www.rainn.org](http://www.rainn.org)):

1. **Be aware** of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
2. **Try to avoid isolated areas.** It is more difficult to get help if no one is around.
3. **Walk with purpose.** Even if you don't know where you are going, act like you do.
4. **Trust your instincts.** If a situation or location feels unsafe or uncomfortable, it probably isn't the best place to be.
5. **Try not to load yourself down** with packages or bags as this can make you appear more vulnerable.
6. **Make sure your cell phone is with you** and charged and that you have transportation or money for transportation.
7. **Don't allow yourself to be isolated** with someone you don't trust or someone you don't know.
8. **Avoid putting music headphones in both ears** so that you can be more aware of your surroundings, especially if you are walking alone.
9. **When you go to a social gathering, go with a group of friends.** Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
10. **Trust your instincts.** If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).
11. **Don't leave your drink unattended** while talking, dancing, using the restroom, or making a phone call. If you've left your drink alone, just get a new one.
12. **Don't accept drinks from people you don't know or trust.** If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from the punch bowls or other large, common open containers.
13. **Watch out for your friends, and vice versa.** If a friend seems out of it, is too intoxicated for the amount of alcohol they've had, or is acting out of character, get him or her to a safe place immediately.
14. **If you suspect you or a friend has been drugged, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).** Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).
15. If you need to get out of an uncomfortable or scary situation here are some things that you can try:

- a. **Remember that being in this situation is not your fault.** You did not do anything wrong, it is the person who is making you uncomfortable that is to blame.
  - b. **Be true to yourself.** Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable with.
  - c. **Have a code word with your friends or family** so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
  - d. **Lie.** If you don't want to hurt the person's feelings it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use are: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.
16. **Try to think of an escape route.** How would you try to get out of the room? Where are the doors? Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?
17. **If you and/or the other person have been drinking,** you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

## PREVENTION AND EDUCATION

The College engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to reduce and eliminate dating violence, domestic violence, sexual assault, stalking and other sexual misconduct which:

- Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome; and
- Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels.

Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students and employees that:

- a) Identifies domestic violence, dating violence, sexual assault and stalking as prohibited conduct;
- b) Defines using definitions provided both by the Department of Education as well as state law what behavior constitutes domestic violence, dating violence, sexual assault, and stalking;
- c) Defines what behavior and actions constitute consent to sexual activity by using the definition of consent found in this guideline;
- d) Provides a description of safe and positive options for bystander intervention. Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene;
- e) Delivers information on risk reduction. Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence; and
- f) Provides an overview of information contained in the Annual Security Report in compliance with the Clery Act.

## **FACULTY, STAFF AND STUDENT TRAINING**

In addition to the Title IX Coordinator's core responsibilities, additional services to the College community will include, working with campus resources to provide ongoing training to new/current students, faculty, and staff on Title IX issues and procedures.

## **BEING AN ACTIVE BYSTANDER**

Bystanders play a critical role in the prevention of sexual and relationship violence. They are “individuals who observe violence or witness the conditions that perpetuate violence. These individuals are not directly involved but have the choice to intervene, speak up, or do something about it.”<sup>1</sup> The College promotes a culture of community accountability where bystanders are actively engaged in the prevention of violence without causing further harm. Individuals may not always know what to do even if they want to help. For example, you may not know how to intervene if a person is yelling at or being physically abusive towards another and it is not safe for you to interrupt. Below is a list of some ways to be an active bystander. If you or someone else is in immediate danger, dial 911.

1. Watch out for your friends and fellow students/employees. If you see someone who looks like he or she could be in trouble or need help, ask if he or she is ok.
2. Confront people who seclude, hit on, attempt to make out with, or have sex with people who are incapacitated.
3. Speak up when someone discusses plans to take sexual advantage of another person.
4. Believe someone who discloses sexual assault, abusive behavior, or experience with stalking.
5. Refer people to on or off campus resources listed in this guideline for support in health, counseling, or with legal assistance.

## **RESOURCES On-Campus**

- Title IX Coordinator | Building One, QC Campus | 309-796-5041
- Deputy Title IX Coordinator | Building One, QC Campus | 309-796-5225
- Title IX Investigator | Building One, QC Campus | 309-796-5177
- Campus Police | Quad City Campus | 309-796-5913 or 911
- Campus Police | East Campus | 309-854-1784 or 911
- Counseling | Building One, QC Campus | 309-796-5199

## **Off-Campus**

- Trinity Hospital | 500 John Deere Road, Moline, IL 61265 | (309)779-5000
- Genesis Hospital (Illini Campus) | 801 Illini Drive, Silvis, IL 61282 | (309)281-4000
- Safe Path Survivor Resources of the Quad Cities | (309)787-1777
- Illinois Domestic Violence Help Line | 1-877-863-6338
- Quad Cities Rape/Sexual Assault Counseling Program | 1521 47<sup>th</sup> Avenue, Moline, IL 61265 | (309)797-6534 | [www.famres.org](http://www.famres.org)

## **State and National**

- Illinois Coalition Against Sexual Assault – [www.icasa.org](http://www.icasa.org)
- Rape, Abuse and Incest National Network - [www.rainn.org](http://www.rainn.org)
- Department of Justice - [www.ovw.usdoj.gov/sexassault.htm](http://www.ovw.usdoj.gov/sexassault.htm)

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<sup>1</sup> Burn, S.M. (2009). A situational model of sexual assault prevention through bystander intervention. *Sex Roles*, 60, 779-792.

**Department of Education Office for Civil Rights** U.S. Department of  
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Email: [OCR@ed.gov](mailto:OCR@ed.gov)

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