

## Black Hawk College Administrative Guidelines

### 3-1.5 Sexual Misconduct Guideline

Insertion Date: 03/2016  
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Approved by:



Board Policy: 5.70 & 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 2013 (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 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 2013 ("VAWA").

### **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 on page 23.

## **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:** The person reporting sexual misconduct; can be either the victim or a third party.

**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.

**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. Consent can be withdrawn at any time. 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.

Relationships of this nature can affect other students, faculty and staff because it places the employee in a position to favor or advance one student’s or employee’s interest at the expense of the others. This relationship may also send an implicit message that obtaining benefits is contingent on a sexual or romantic relationship.

If a supervisory or faculty-student relationship exists between husband and wife or those in a pre-existing romantic relationship, the faculty member or supervisor must notify his or her supervisor 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.

Examples of behavior that would 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, or by 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

**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.

**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).

**RESPONDENT/ACCUSED:** The person reported to have engaged in sexual misconduct is the "respondent".

**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:

- **Non-consensual Sexual Contact (or attempts to commit)** defined as any intentional sexual touching with any object(s) or body part that is without consent and/or by force
- **Sexual contact** is defined as kissing or touching other's intimate parts. Intimate parts include but are not limited to a person's groin, buttocks, mouth or breasts
- **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. Sexual harassment also may include inappropriate touching, suggestive comments, and public display of pornographic or suggestive calendars, posters, or signs where such images are not connected to any legitimate academic or workplace purpose.

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

- Calling someone by a sexually-oriented or demeaning name;
- Giving someone unwanted gifts of a sexual nature;
- Displaying sexually suggestive materials or sending notes, email, or jokes to a person that are sexually explicit;
- Touching someone sexually without their consent;
- Massaging someone without permission;
- Brushing up against someone repeatedly;
- Continuing to ask out a person who already has said he or she is not interested; or
- Exposing your private parts to another person.

**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.

Examples of behavior that would constitute stalking include the following:

- Spreading lies about a person;
- Repeatedly communicating with a person who doesn't wish to be communicated with;
- Follow 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 semester or summer session; and 2) The student's attendance in at least one class has been verified. Prior to the beginning of

classes, pre-registered students are considered enrolled. After classes begin, students need to be attending classes in order to maintain their enrollment status.

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

### **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 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, investigation, and resolution are protected by FERPA and will not be released, except as required by law. Non-identifying 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 is strongly encouraged to contact the Title IX Coordinator (contact information listed on page 23).

A complainant need not supply a written statement, although it is preferable. Actual notice, which consists of direct statements from a complainant of sexual misconduct, are desirable, although the College accepts verbal or written statements from any party who has knowledge of an incident occurring either on or off campus that has the potential to interfere with the educational mission of the College. To report sexual misconduct, contact the Title IX Coordinator.

**All Title IX Responsible Employees, including all 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.**

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**

Because sexual misconduct that occurs off campus may impact a person's work, academic, or extracurricular experience, the College assumes jurisdiction to adjudicate off campus reports of sexual misconduct should they be reported. 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 continue to conduct an

investigation for purposes of complying with Title IX and take steps to prevent the recurrence of such conduct and remedy the effects, if appropriate.

### **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 Coordinator at [kochj@bhc.edu](mailto:kochj@bhc.edu) or 309-796-5177.

#### **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, and/or emotional and other support.

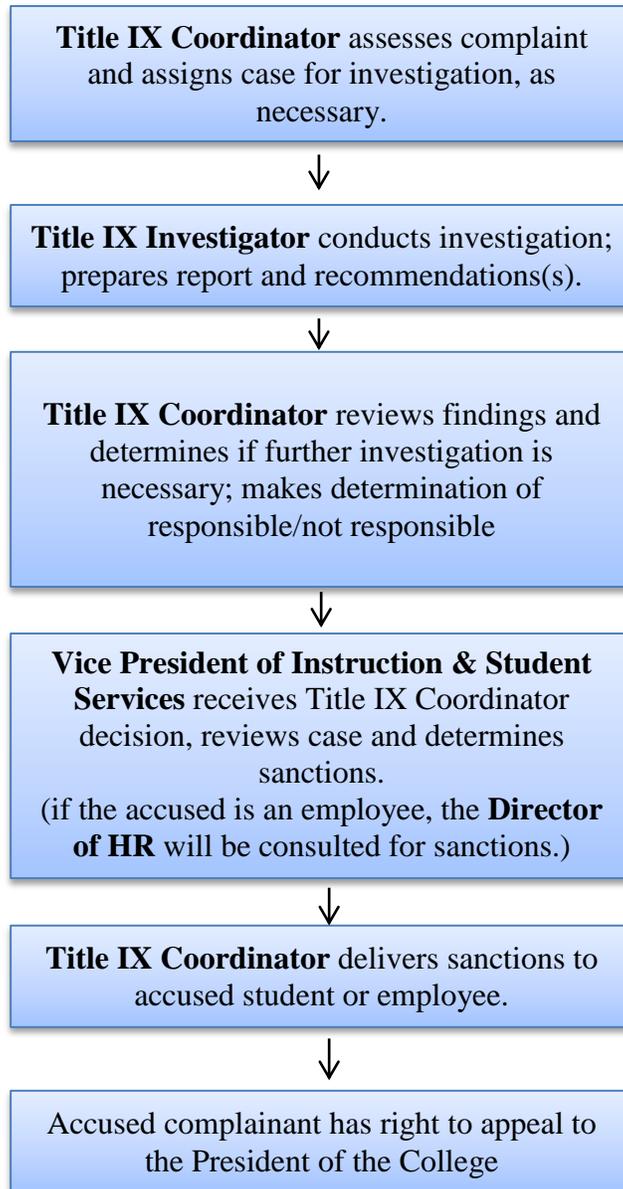
### **INVESTIGATION & RESOLUTION**

The Title IX Coordinator and Deputy Title IX Coordinators are trained annually on the issues related to 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.

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 Coordinator, Deputy Title IX Coordinators or other trained College staff or faculty member. 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.

**REPORTING PROCESS:** Black Hawk College reserves the right to seek counsel of the college attorney at any time in the process.



### **INVESTIGATION PROCESS**

- Upon receiving a report (either verbally or 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, the Title IX Coordinator will either initiate the investigation or assign the case for investigation to one of the Deputy Title IX Coordinators 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.

- 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 Deputy Title IX Coordinator or other trained investigator is responsible for conducting the investigation of a complaint, the Deputy/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.
- The Title IX Coordinator will then present the Vice President of Instruction & Student Services (if the accused is a student) or the Director of Human Resources (if the accused is an employee) 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), 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 Title IX Coordinator will confer with the Director of Human Resources and decide on the appropriate sanction. After determining the sanction, 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 by the Title IX Coordinator.
  - **STUDENT:** If the accused is a student at the College, the Title IX Coordinator will confer with the Vice President of Instruction & Student Services and decide on the appropriate sanction. After determining the sanction, the Title IX Coordinator will issue the finding, the rationale and the associated sanctions in writing simultaneously to the complainant and respondent. The Vice President of Instruction & Student Services will impose the sanctions identified by the Title IX Coordinator.
- 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.

- The complainant and the respondent have the right to appeal determinations regarding responsibility to the President of the College (see *Appeal* below).
- The Vice President of Instruction & Student Services or Director of Human Resources, as applicable, will review the case and determine any sanctions for students, faculty, and staff.

### **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**

Both the complainant and the respondent have a right to appeal the finding of responsibility. Appealing the finding of responsibility must be based on an alleged procedural error, (i.e., not merely that the party does not agree that the finding or sanction is appropriate) or the discovery of new evidence. Both parties will have five (5) business days from notification to appeal in writing to the President of the College (contact information listed on page 23).

The decision of the President on any appeal will be final. Both individuals will be informed simultaneously in writing of the outcome of any appeal and any change(s) to the results that occur prior to the time that such results become final and when such results become final. The complainant will be notified of any sanctions/outcomes that are specific to the complainant (e.g., respondent has interim suspension and is ordered by the institution to have no contact with the complainant.)

### **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.

## **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

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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.

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 | 309-796-5177
- Deputy Title IX Coordinator | Building One, QC Campus | 309-796-5041
- 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)

### **Department of Education Office for Civil Rights**

U.S. Department of Education Office for Civil Rights  
Lyndon Baines Johnson Department of Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: 800-421-3481 | FAX: 202-453-6012 | TDD: 800-877-8339 |  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

## **CONTACT INFORMATION**

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