



Policy No:

November 18, 2015

Sexual Misconduct and Gender Based Violence Procedures

Applies to (check all that apply):

Faculty X Staff X Students X

Division/Department Entire College Community College X

Topic/Issue: Sexual Misconduct and Gender Based Violence

Background to Issue/Rationale for Policy:

The College is committed to creating a campus environment that is free from all forms of gender and sex-based misconduct, discrimination, and violence. The College is committed to achieving this environment through a multi-tiered approach that includes training, education and prevention programs, as well as through policies and procedures that encourage reporting of incidents and that prohibit retaliation.

Acts of sexual misconduct and gender based violence undermine the College's mission by threatening the careers, educational experiences, and well-being of those associated with the College. Members of the campus community, guests, and visitors have the right to be free from all forms of sexual misconduct and gender based violence, and is expected to conduct themselves in a manner that does not infringe upon the rights of others. As such, students, faculty, staff and third party vendors are permitted to file a complaint under this policy.

State/Federal Regulatory Requirements (cite if applicable):

The U.S. Department of Education's Office for Civil Rights (OCR) enforces, Title IX of the Education Amendments of 1972. Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. The principal objective of Title IX is to avoid the use of federal money to support sex discrimination in education programs and to provide individual citizens effective protection against those practices. Title IX applies, to all aspects of federally funded education programs or activities. In addition to traditional educational institutions such as colleges and universities, Title IX also applies to any education or training program operated by a recipient of federal financial assistance. (The U.S. Department of Education's Title IX regulations, 34 C.F.R. Part 106).

Policy Language:

The primary purpose for the revision of the Sexual Misconduct and Gender Based Violence Policy is to create a campus environment that is free from all forms of sexual misconduct. It is the policy of Baltimore City Community College to create a campus environment that is free of all gender and sex-based misconduct, discrimination, and violence.

I. Overview of the Policy

The College is committed to creating a campus environment that is free from all forms of gender and sex-based misconduct, discrimination, and violence. The College is committed to achieving this environment through a multi-tiered approach that includes training, education and prevention programs, as well as through policies and procedures that encourage reporting of incidents and that prohibit retaliation.

Acts of sexual misconduct and gender based violence undermine the College's mission by threatening the careers, educational experiences, and well-being of those associated with the College. Members of the campus community, guests, and visitors have the right to be free from all forms of sexual misconduct and gender based violence, and are expected to conduct themselves in a manner that does not infringe upon the rights of others. As such, students, faculty, staff and third party vendors are permitted to file a complaint under this policy.

II. Applicability

This policy applies to all members of the College community, including students, faculty and staff. It also applies to all third parties within the College's control. This policy applies to sexual misconduct or gender specific violence:

- On campus premises, in any College facility or College property
- At any College sponsored, recognized or approved program, visit or activity, regardless of location

III. Notice and Policy of Non-Retaliation

A. Non-Retaliation

It is a violation of College policy to retaliate in any way against students or employees because they have raised allegations of sexual or other discriminatory harassment or conduct, or who participate as a witness in an investigation of a sexual assault. Person(s) against whom the complaint is lodged also bear a responsibility to abstain from retaliatory behavior toward the complainant(s) and/or any individual participating in the investigation. Because a charge of discriminatory harassment or conduct may have serious consequences, complainant(s) must bring the charge in good faith and in accordance with College policy. A complainant whose allegations are found to be brought with malicious intent will be subject to disciplinary action.

IV. Definitions

A. Consent means a knowing, voluntary and affirmatively communicated willingness to participate in a particular sexual activity or behavior. Only a person who has the ability and capacity to exercise free will and make a rational, reasonable judgment can give consent. Consent may be expressed either by words and/or actions, as long as those words and/or actions create a mutually understandable agreement to engage in specific sexual activity. It is the responsibility of the person who wants to engage in sexual activity to ensure that he/she has consent from the other party, and that the other party is capable of providing consent.

Lack of protest or resistance is not consent. Nor may silence, in and of itself, be interpreted as consent. For that reason, relying solely on non-verbal communication can lead to misunderstanding.

Previous relationships, including past sexual relationships, do not imply consent to future sexual acts.

Consent to one form of sexual activity cannot automatically imply consent to other forms of sexual activity.

Consent must be present throughout sexual activity and may be withdrawn at any time. If there is confusion as to whether there is consent or whether prior consent has been withdrawn, it is essential that the participants stop the activity until the confusion is resolved.

Consent cannot be obtained by use of physical force, threats, intimidating behavior or coercion. Coercion is pressuring another person into sexual activity.

It is a violation of this policy to engage in sexual activity with someone you know, or should know, is incapacitated. Incapacitated, for purposes of this policy, means that the person's decision-making ability is impaired such that they lack the capacity to understand the who, what, where, why or how of their sexual interaction. Incapacitation may result from: sleep or unconsciousness, temporary or permanent mental or physical disability, involuntary physical restraint, or the influence of alcohol, drugs, medication or other substances used to facilitate sexual misconduct.

B. Dating Violence encompasses a broad range of behaviors, including sexual assault, physical abuse and other forms of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant, considering the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

C. Domestic Violence encompasses a broad range of behaviors, including sexual assault, physical abuse and other forms of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, or by any other person against an adult or youth complainant protected from those acts by domestic or family violence laws of Maryland.

D. Relationship Violence encompasses a broad range of behaviors, including sexual assault, physical abuse and other acts, threats or a pattern of abusive behavior of a physical or

sexual nature by one partner intended to control, intimidate, manipulate, humiliate, frighten, coerce or injure the other. These acts may be directed toward a spouse, an ex-spouse (also referred to as domestic violence), or by a current or former intimate partner (also referred to as dating violence”).

- E. Responsible College Employee** includes any College administrator, supervisor, faculty, member, campus police, coach, trainer, or anyone who has the authority to take action or redress sexual misconduct; or whom a student could reasonable believe has such authority or duty.
- F. Sexual Assault** (Non-consensual sexual intercourse or oral sex) means any act of sexual penetration with another individual without consent. Sexual penetration includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.
- G. Sexual Contact** (Non-consensual sexual contact) means any unwanted intentional touching of the intimate body parts of another person or yourself; causing another to touch your intimate body parts; or the disrobing or exposure of another without consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or any other body part that is touched in a sexual manner. Unwanted sexual contact includes attempted sexual intercourse.
- H. Sexual Exploitation** means taking non-consensual or abusive sexual advantage of another person for one’s own advantage or benefit of for the advantage or benefit of anyone other than the person being exploited.
- I. Sexual Harassment.** Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature when (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or unreasonably creating an intimidating, hostile, or offensive working or academic environment.
- J. Sexual Intimidation** means threatening behavior of a sexual nature directed at another person, such as threatening to sexually assault another person or engaging in indecent exposure.
- K. Sexual Misconduct** is an umbrella term that encompasses dating violence, domestic violence, sexual harassment, sexual assault, sexual contact, sexual exploitation, sexual intimidation, relationship violence and stalking. Sexual misconduct can occur between strangers or acquaintances, including people involved in intimate or sexual relationship. Sexual misconduct can be committed by any person, regardless of gender identity, and

can occur between people of the same or different sex, sexual orientation or gender expression.

- L. Title IX Officer** refers to the individual designated by the President of the College to: 1) oversee the College's response to sexual misconduct reports and complaints and identify and address any patterns or systemic problems revealed by such reports and complaints; 2) conduct sexual misconduct investigations; 3) oversee, review, content, and in collaboration with other College offices, conduct training for students, faculty, and staff on sexual misconduct issues; 4) ensure that appropriate policies and procedures are in place for responding to complaints of sexual misconduct against faculty, staff and students; and 5) work with local law enforcement to ensure coordinated responses to sexual misconduct cases.

M. COMPLAINT PROCEDURES

For the purposes of these procedures, the Complainant is the person filing a Complaint. The Respondent is the person who is alleged to have violated this Policy.

Students, faculty, and staff who receive complaints of sexual harassment or sexual violence must report complaints to the Title IX Coordinator.

1. Students filing a complaint of sexual harassment/assault may report to the Title IX Coordinator.
2. If the accused individual is a student, the complaint should be reported to the Title IX Coordinator.
3. If the accused individual is a faculty, staff or a visitor, the complaint should be reported to the Human Resources designated Title IX representative.
4. Faculty and staff who receive complaints of sexual harassment or sexual violence from a student may report to the Title IX Coordinator.
5. Faculty and staff who receive complaints of sexual harassment or sexual violence from a faculty or staff report to the Human Resource designated Title IX representative.

SEXUAL HARASSMENT

A. Introduction

An individual who believes that they have been discriminated against or harassed, as defined in this policy, by another College employee or vendor, may seek resolution through the following complaint procedures. While these procedures contain reporting and response deadlines, please note that the Executive Director of Human Resources may extend for a reasonable period of time any of the deadlines specified in this section.

1. Any employee or student who believes that he or she has been the victim of sexual harassment or retaliation should report the alleged incident immediately to the Executive

Director of Human Resources/designee or any BCCC staff, faculty member, or supervisor.

2. Any BCCC employee who receives a report of sexual harassment or becomes aware of conduct in violation of the Policy has an affirmative duty to report immediately to the Executive Director of Human Resources any behavior that he or she believes is in violation of this Policy.
3. The Executive Director of Human Resources/designee shall promptly contact and inform the complainant of BCCC's policy prohibiting sexual harassment and of the procedures available to resolve a complaint of sexual harassment. Both informal and formal procedures for resolving a complaint of sexual harassment are available for use by employees, students, and volunteers.
4. An investigation of the complaint must be conducted immediately by the Executive Director of Human Resources/designee or another designated official.
5. Complaints against students shall be brought to the attention of the Vice President for Student Affairs.

If a supervisor/advisor or other College office is contacted by a Complainant regarding allegations of sexual harassment, the individual in receipt of such information will promptly notify the Title IX coordinator. In order to meet the College's legal obligations, the Title IX coordinator may determine that an investigation is warranted without a formal complaint if the College has sufficient notice that sexual harassment may have occurred and/or the allegations of sexual harassment are particularly serious (such as coerced sexual acts). Pursuant to its Title IX obligations, the College may take interim measures it deems necessary during an investigation to ensure the safety and well-being of the Complainant and/or College community.

B. Protective Measures and Confidentiality

1. Retaliation by College Faculty members, staff, or students against a person who makes a complaint of sexual harassment, supports a complaint of sexual harassment, or testifies during an investigation of a complaint of sexual harassment is expressly prohibited. If an individual is found to have engaged in retaliation in violation of this Policy, he or she will be subject to disciplinary action. Any individual who has been a victim of sexual harassment or retaliation shall immediately report such conduct to the Executive Director of Human Resources/designee.
2. Complainants, Respondents, witnesses, and all persons involved in making investigations, or resolving a complainant of sexual harassment, shall use their good faith efforts to keep confidential all information relating to a complaint. Failure to maintain confidentiality may result in disciplinary action and/or other serious sanctions.
3. Allegations of sexual harassment are extremely serious, with potential for great harm if ill-conceived or without foundation. It is a violation of the policy for an individual to file an untruthful or bad faith claim of sexual harassment. The college community should not be discouraged from filing legitimate complaints of sexual harassment. An individual found to have

filed an untruthful or bad faith complaint is in violation of this Policy and will be subject to disciplinary action.

C. Sanctions

1. Sanctions against BCCC faculty and staff for sexual harassment may range from reprimand to termination, depending on the severity of the conduct and the circumstances of the particular.
2. Sanctions against students and volunteers at the college for sexual harassment may include suspension or expulsion from BCCC programs.
3. All employees and students should be aware that they may be civilly or criminally liable if they engage in prohibitive conduct.

D. Informal Procedures for Resolving a Complaint

1. A Complaint of an incident of sexual harassment or other behavior in violation of the Policy may be reported to any BCCC staff or faculty member, including the Complainant's supervisor, department/division head, dean or any other College administrator. Students and volunteers are encouraged to report complaints to the Title IX Coordinator or Executive Director of Human Resources/designee. Any BCCC employee who receives a report of sexual harassment or otherwise becomes aware of conduct in violation of the Policy shall immediately notify the Executive Director of Human Resources/designee. (If the person alleged to have violated this Policy is the Executive Director of Human Resources/designee, the complaint shall be brought to the attention of the President who shall investigate the alleged violation. The Executive Director of Human Resources/designee shall promptly contact and inform the Complainant of the College's Policy Prohibiting Sexual Harassment and of the procedures available to resolve a complaint of sexual harassment. While not required to initiate an investigation, the Complainant is strongly encouraged to submit a written, signed complaint as a means of achieving a comprehensive resolution.

2. Upon receipt of a complaint, the Executive Director of Human Resources/designee shall, within ten days, conduct and conclude a confidential investigation of the facts, which will include: an interview with the Complainant, the Respondent, and any witnesses to the material events; the collection of all relevant documents; and consultation with BCCC's General Counsel.

The ten-day period of investigation may be extended with the approval of the President.

3. At the conclusion of the investigation, the Executive Director of Human Resources/designee will make reasonable efforts to resolve the Complaint to the satisfaction of BCCC, the Complainant, and the Respondent. If a mutually agreeable resolution is reached, the Complainant, the Respondent and the College will sign a statement acknowledging concurrence with the resolution of the Complaint.

4. The Executive Director of Human Resources/designee shall retain Complaints processed through informal procedures in a confidential file separate from any personnel or student files.

The confidential file should include: the name of the Complainant; the name of the Respondent; the nature of the Complaint; the incident date; the names of witnesses; and any other information relevant to the incident.

5. All administrators have ultimate responsibility for overseeing compliance with this policy at his or her respective unit of the college. In addition, each supervisor shall be required to report any complaint of sexual harassment to the individual or individuals designated in the procedures. All members of the BCCC community are required to cooperate in any investigation of a sexual harassment complaint.

E. Formal Procedures for Resolving a Complaint

1. A person wishing to process a Complaint of sexual harassment or other behavior in violation of the Policy through formal procedures shall file his or her Complaint with the Executive Director of Human Resources/designee or Title IX Coordinator within thirty (30) days following the alleged violation(s) or within 30 days following the date on which the Complainant knew, or reasonably should have known, of the alleged incident.

2. The Complaint shall be signed by the Complainant and shall state: the allegations, including when and where the alleged conduct occurred; the name(s) of the person(s) alleged to have violated the Policy; the names of any witnesses to the violation; and the relief requested.

3. The Respondent shall be promptly furnished with a copy of the Complaint by the Executive Director of Human Resources/designee or Title IX Coordinator and has ten (10) days to submit a written response to the allegations.

4. Upon receipt of a formal Complaint of sexual harassment, the Executive Director of Human Resources/designee or Title IX Coordinator shall immediately consult with BCCC's General Counsel prior to taking any action to investigate or resolve the Complaint.

5. The Executive Director of Human Resources/designee or Title IX Coordinator shall, within ten days of receipt of the formal Complaint and request, conduct and conclude a confidential investigation of the facts. The ten day period of investigation may be extended, with the approval of the President. The investigation will include: interviews with the Complainant, the Respondent and any witnesses; the collection of all relevant documents.

6. The Executive Director of Human Resources/designee and Title IX Coordinator shall make every effort to keep the investigation confidential and shall notify all those who are contacted in the course of the investigation that it is a violation of the Policy Prohibiting Sexual Harassment to fail to maintain confidentiality with respect to both the facts of the investigation and any information that the individual provides to the Executive Director of Human Resources or Title IX Coordinator.

7. Within five (5) days from the conclusion of the investigation, the Executive Director of Human Resources or Title IX Coordinator shall issue to the Complainant and the Respondent a written report setting forth: findings of fact concerning the events that occurred or were alleged to have occurred; conclusions as to whether the events that did occur constituted a violation of

BCCC's Policy Prohibiting Sexual Harassment; recommendation as to what disciplinary sanctions, if any, should be imposed.

8. In preparing this report, the Executive Director of Human Resources/designee and Title IX Coordinator shall consult fully with BCCC's General Counsel. If the Executive Director of Human Resources/designee or Title IX Coordinator concludes that the Policy has been violated and recommends a disciplinary sanction, the Executive Director/designee or Title IX Coordinator shall consult with the President and the Respondent's supervisor concerning the appropriate disciplinary sanction.

9. The Executive Director of Human Resources/designee or Title IX Coordinator shall mail to the Complainant and Respondent the written report and a statement of the Complainant's and Respondent's appeal rights.

F. Disciplinary Actions

Recommended disciplinary action may include, but is not limited to: a letter of reprimand, a letter of apology from the Respondent to the Complainant; demotion of the Respondent; suspension of the Respondent; termination of Respondent's employment with the College; suspension or expulsion of a student Respondent from the College.

BCCC shall not impose disciplinary action, except for a mandatory intervention for substance abuse, for a violation of the BCCC alcohol and/or drug use policies, for a student who reports to BCCC or a law enforcement officer an incidence of sexual assault or who participates in an investigation of a sexual assault as a witness if:

1. BCCC determines the violation occurred during or near the time of the alleged sexual assault;
2. The student is determined to have made the report of sexual assault or is participating in an investigation as a witness in good faith; and
3. BCCC determines that the violation was not an act that was reasonably likely to place the health or safety of another individual at risk.

G. Formal Hearing/Appeal

1. If either the Complainant or Respondent disagrees with the report of the Executive Director of Human Resources/designee or Title IX Coordinator, either may request a formal hearing by filing a written request for a hearing with the President, Baltimore City Community College within five (5) days of the date of receipt of the report. The request for a hearing shall state with specificity the portions of the decision with which the person requesting the hearing disagrees.

2. If neither the Complainant nor the Respondent requests a formal hearing within the time stipulated above, the decision shall be implemented as the final decision of the College, unless the President directs otherwise.

3. Upon receipt of a request for a hearing, the President shall appoint a three member Appeal Committee. The members of the Appeal Committee shall be selected from the Sexual

Harassment Panel, a 15 member college-wide group. Each division shall appoint 3 members to serve alternatively on the Sexual Harassment Panel. Members of the Sexual Harassment Panel will not participate on an Appeal Committee that involves a Complainant or Respondent from his/her division. Each member of the Sexual Harassment Panel will be required to sign a Confidentiality Agreement. The President shall appoint one of the three members as the Committee Chair. No member of the appointed Hearing Committee may have served as an investigator, witness, or party in connection with the Complaint in question.

4. The Appeal Committee shall promptly conduct a hearing. The Committee Chair may limit the issues in the hearing to those issues or aspects of the report of the Director about which the parties disagree. The purpose of the hearing is to determine:

- a. the events that occurred;
- b. whether the events that did occur constituted a violation of the College's Policy Prohibiting Sexual Harassment; and
- c. if the Committee concludes that the Policy has been violated, the Committee's recommendations as to what disciplinary sanctions, if any, should be imposed.

5. Prior to the hearing and in preparing its report, the Committee shall consult fully with the General Counsel.

6. At the hearing, the report of the Executive Director of Human Resources/designee shall be introduced as evidence. The person or persons asserting that there has been a violation of the Policy Prohibiting Sexual Harassment shall have the burden of ultimate persuasion, by the preponderance of the evidence, that the alleged events occurred and constituted a violation of the Policy.

7. The Complainant, the Respondent, and the Executive Director of Human Resources/designee may all participate fully in the hearing. Each may present opening and closing statements; call, examine and cross-examine witnesses; and introduce documentary evidence. Hearing Committee members may question witnesses, and the Committee Chair may exclude irrelevant or unduly repetitious testimony. The College attorney may be present at the hearing to provide advice, education, and counsel to the Hearing Committee.

8. Within fifteen (15) days following the conclusion of the hearing, the Hearing Committee shall submit to the President a written report containing its findings, conclusions, and recommendation concerning the matters before it. That written report shall be mailed to the Complainant, the Respondent, and the Executive Director of Human Resources or Title IX Coordinator.

9. The report should contain: statement of the facts that occurred; the Committee's conclusions as to whether the conduct that occurred constitutes sexual harassment or other behavior that is a violation of the Policy; and a recommendation for disciplinary action, if any.

10. Within fifteen (15) days following the receipt of the report of the Hearing Committee, the President shall issue a final written decision that will be binding on all parties. The final decision shall be mailed to the Complainant, Respondent, Executive Director of Human Resources/designee, Title IX Coordinator, and the members of the Hearing Committee.

H. Campus Sexual Assault Climate Survey

On or before March 1, 2016, and at least every two (2) years thereafter, the College shall:

1. Develop an appropriate Sexual Assault campus climate survey using nationally recognized best practices for research and climate surveys; and
2. Administer the Sexual Assault campus climate survey to students in accordance with the procedures set by the Maryland Higher Education Commission (MHEC).

On or before June 1, 2016, and at least every two (2) years thereafter, the College shall submit to MHEC a report in accordance with the requirements set forth in Maryland Code Annotated, Education Article, Section 11601(g).

I. External Filing Procedures

Should the individual wish to file a formal Complaint with an external agency, he or she may do so with one of the following agencies:

Equal Employment Opportunity Commission (EEOC)
1801 L Street, N.W.
Washington, D.C. 20507

Equal Employment Opportunity Commission (EEOC)
10 South Howard Street, 3rdFloor
Baltimore, Maryland 21201

SEXUAL ASSAULT

The policy and procedures for sexual assault are contained in the BCCC Student Code of Conduct.

J. Preservation of Evidence

If a complainant thinks she or he may want to press charges, the complainant is encouraged to immediately be examined at one of the SAFE programs which provide free (anonymous) exams focused on evidence collection. Evidence can be collected up to 120 hours after assault, but the sooner it is done, the more likely that useful evidence can be recovered. Prior to a SAFE exam, it is important not to bathe, shower, douche, change one's clothes or disturb anything at the crime scene. Extremely valuable physical evidence can be obtained from the complainant, the complainant's clothing and objects at the scene of the crime. Persons should be aware that because police reports are public records under Maryland law, BCCC Department of Public Safety cannot hold reports of a crime in confidence.

Complainants of Dating Violence or Domestic Violence should take steps to preserve evidence that may aid in any administrative action and/or criminal prosecution that may result. Examples of items that may serve as evidence include any recorded media such as

voice mails, e-mails, text messages, social media posts or messages, and any other notes, writings, correspondence, etc. that may be relevant to the case. Depending on the situation, clothing worn by the complainant and/or the accused may also be needed as evidence and therefore should be preserved in its original state. Do not disturb the scene of any Dating Violence or Domestic Violence incident, as police may want to photograph the scene upon their arrival. They will also want to photograph any injuries that are immediately apparent or that may appear days later. If any weapon was used or any object was used as a weapon, leave it in position, and do not touch it until police arrive.

It is very important to seek medical attention as soon as possible, so a complainant can receive treatment for any physical injuries, be screened for sexually transmitted diseases/pregnancy/date rape drugs and/or obtain emergency contraception. A complainant is encouraged to seek medical care even if one does not think one will report the assault.

Appendix A

Victim	Perpetrator	Resource
All reports involving students	Perpetrator is a student	Title IX Coordinator
All reports involving students	Perpetrator is a faculty, staff or visitor	Title IX Coordinator Human Resources Designee
All reports involving faculty and staff	Perpetrator is faculty or staff	Human Resources Designee Title IX Coordinator

Implementation Date: 11/19/2015

Proposed by: Tonja Ringgold
Vice President/Senior Staff Member

Approved by the Board of Trustees:

Originator/Division: Student Affairs

****This policy once approved by the Board of Trustees supersedes all other policies.***