



Richard Bland College

of WILLIAM & MARY

Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence

Policy Number 1091

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Table of Contents

| | |
|---|----|
| A. Policy Statement | 5 |
| B. Reason for Policy | 5 |
| C. Applicability of the Policy | 6 |
| D. Definitions..... | 6 |
| 1. Discrimination | 6 |
| 2. Harassment..... | 6 |
| 3. Prohibited Conduct: | 6 |
| 4. Complainant..... | 7 |
| 5. Respondent..... | 7 |
| 6. Sexual Harassment..... | 7 |
| 7. Education program or activity | 7 |
| 8. Supportive Measures..... | 7 |
| 9. Formal Complaint | 7 |
| 10. Quid pro quo | 7 |
| 11. Hostile environment..... | 8 |
| 12. Sexual misconduct | 8 |
| a. Sexual Assault..... | 8 |
| b. Sexual exploitation..... | 8 |
| c. Dating violence | 9 |
| d. Domestic violence..... | 9 |
| e. Stalking | 9 |
| 13. Sexual Violence | 9 |
| 14. Consent | 10 |
| a. Physical Violence..... | 10 |
| b. Threats..... | 10 |
| c. Intimidation | 10 |
| d. Coercion | 10 |
| 15. Incapacitation..... | 11 |
| 16. Alcohol, Medications, and Other Drugs | 11 |
| 17. Complicity | 11 |

| | |
|---|----|
| 18. Retaliation | 11 |
| E. Role of the Title IX Coordinator | 11 |
| F. Expectations..... | 12 |
| G. Privacy and Confidentiality..... | 13 |
| Privacy | 13 |
| Confidentiality | 13 |
| Confidential Resources | 14 |
| Clery Act Reporting..... | 14 |
| H. Confidential Resources and Procedures for Anyone Who Has Experienced Sexual Misconduct..... | 14 |
| 1. Recommended Steps..... | 14 |
| 2. Resources for Anyone who has experienced Sexual Misconduct | 17 |
| 3. Reporting to the Police | 17 |
| 4. Reporting to RBC | 17 |
| Title IX Contact Information | 18 |
| 5. Responsible Employee..... | 18 |
| 6. Reports of Other Discrimination/Harassment Not Sexual Misconduct:..... | 19 |
| I. Timely Warning..... | 20 |
| J. Initial Assessment..... | 20 |
| K. Academic Record Hold and Transcript Notation..... | 21 |
| L. Request for Confidentiality and Anonymous Reporting | 21 |
| 1. Request for Confidentiality or No Formal Action Be Taken..... | 21 |
| Confidential Resources | 22 |
| Reports or Complaints Involving Minors | 22 |
| 2. Anonymous Report | 22 |
| M. Threat Assessment for Sexual Violence..... | 22 |
| 1. Review Committee | 22 |
| 2. Risk Factors | 23 |
| 3. Review Committee Procedures and Determinations | 23 |
| N. Supportive Measures..... | 24 |
| O. Amnesty | 25 |
| P. False Information..... | 25 |
| Q. Violations of Law..... | 26 |
| R. Education and Awareness | 26 |

S. Academic Freedom and Free Speech..... 26
T. Documentation and Record Keeping..... 27
U. Related Documents 27

Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence

A. Policy Statement

Richard Bland College (RBC or College) is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from harassment and discrimination based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, gender identity, pregnancy, genetic information, against otherwise qualified persons with disabilities, or based on any other status protected by law. Such an environment is necessary to a healthy learning, working, and living atmosphere because discrimination and harassment undermine human dignity and the positive connection among everyone on campus. RBC does not discriminate on the basis of sex in education programs and activities, as required by Title IX.

Our community of trust requires that its members treat one another with respect, dignity, and fairness. This policy is designed to ensure a safe environment for the members of the Richard Bland College community. In pursuit of this goal, this policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 (“Title IX”); Title VII of the Civil Rights Act of 1964 (“Title VII”); and/or the Virginia Human Rights Act. Such behavior also requires the University to fulfill certain obligations under the Violence Against Women Reauthorization Act of 2013 (“VAWA”) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”).

This policy also addresses complaints or reports of retaliation against those who have opposed practices prohibited by this policy, those who have filed complaints or reports under this policy, and those who have testified or otherwise participated in enforcement of this policy.

B. Reason for Policy

This policy helps RBC comply with federal and state laws, including the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex (including sexual violence) in education programs or activities. It also helps RBC comply with the Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion, sex, or national origin and with the Violence Against Women Reauthorization Act of 2013 (VAWA), which amended the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act) and requires institutions to prohibit dating violence, domestic violence, sexual assault, and stalking. RBC also is committed to complying with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Higher Education Opportunity ACT (HEOA) relating to military and veterans issues.

C. Applicability of the Policy

This policy applies to **on-campus** conduct involving students, employees, faculty and staff, visitors to campus (including, but not limited to, students participating in camp programs, non-degree seeking students, exchange students, and other students taking courses or participating in programs at Richard Bland College), and contractors working on campus who are not Richard Bland College employees, and to students, visiting students, employees, faculty, and staff participating in Richard Bland College-sponsored activities within the United States. This policy is applicable to any conduct that occurs off campus that has continuing effects that create a hostile environment on campus. This policy also is applicable regarding the College's various technological resources.

This Policy is effective August 14, 2020. This policy supersedes any and all previously adopted policies or procedures for Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence, except those that fall within the purview of the College's Policy on Discrimination, Harassment and Retaliation. Allegations of either on-campus or off-campus violations of this policy should be reported to the Title IX Coordinator's office as stated herein. Allegations of sexual and gender-based harassment occurrences through the use of campus or personal technology also should be reported to the Title IX Coordinator's office.

Should an allegation of conduct not constitute "sexual harassment," does not occur within an "educational program or activity," or does not occur in the United States, the College *must* dismiss the complaint for purposes of Title IX. However, the College is permitted to address such allegations through its code of conduct or other disciplinary code or policy.

D. Definitions

- 1. Discrimination:** Inequitable and unlawful treatment based on an individual's protected characteristics or statuses -- race, sex, color, national origin, religion, age, veteran status, sexual orientation, gender identity, pregnancy, genetic information, disability, or any other status protected by law -- that excludes an individual from participation in, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment, or participation in an educational program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.
- 2. Harassment:** A form of discrimination in which unwelcome verbal, written, or physical conduct is directed toward an individual on the basis of his or her protected characteristics or statuses, by any member of the campus community. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- 3. Prohibited Conduct:** Any form of discrimination, harassment, sexual misconduct, or retaliation mentioned in this policy is Prohibited Conduct and is strictly forbidden and subject to investigation and sanctions. Students who violate this policy may receive sanctions up to

and including permanent removal from the residence halls and expulsion from Richard Bland College. Employees who violate this policy may receive sanctions up to and including employment termination.

4. **Complainant:** The individual, who is the alleged to the victim or survivor of conduct that could constitute sexual harassment.
5. **Respondent:** The individual, who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
6. **Sexual Harassment:** Under Title IX, there are three types of conduct which constitute sexual harassment. The types are:
 1. Quid pro quo harassment (by an employee);
 2. Unwelcomed conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; and
 3. Sexual assault, dating violence, domestic violence, or stalking.For these types of conduct to constitute Title IX sexual harassment, they must occur within an institution's education program or activity against a person in the United States.
7. **Education program or activity:** Any academic, extracurricular, research, occupational training, or other education program or activity operated by the College. Educational program or activity also includes locations, events, or circumstances over which the College exercised substantial control as to both the respondent and the context in which the sexual harassment occurred.
8. **Supportive Measures:** Individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
9. **Formal Complaint:** any document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
10. **Quid pro quo:** This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment, or participation in a Richard Bland College activity are conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a Richard Bland College program or activity.

11. Hostile environment: A hostile environment may be created by unwelcomed oral, written, graphic, or physical conduct that is sufficiently severe, pervasive and objectively offensive that effectively denies a person to participate in or benefit from educational programs, services, activities and opportunities or the individual's employment access, benefits, or opportunities. Mere subjective offensiveness is not enough to create a hostile environment. In determining whether conduct creates a hostile environment, the following factors will be considered:

- a. The degree to which the conduct affected one or more individuals' education or employment,
- b. The nature, scope, frequency, duration, and location of the incident(s),
- c. The identity, number, and relationships of persons involved,
- d. The perspective of a "reasonable person" in the same situation as the person subjected to the conduct, and
- e. The nature of higher education.

12. Sexual misconduct: includes sexual assault, sexual exploitation, dating violence, domestic violence, and stalking.

- a. **Sexual Assault** is intentionally engaging or attempting to engage in nonconsensual bodily contact of a sexual nature. It includes sexual contact or sexual intercourse or penetration achieved by the use of physical force, threats, intimidating behavior, or coercion or when an individual is incapacitated or otherwise incapable of providing consent. Sexual Assault is:
 - i. ***Non-Consensual Sexual Contact*** is any intentional or attempted touching of a sexual nature. Non-consensual sexual contact includes, but is not limited to: any intentional or attempted touching of a person's genitalia, groin, breast, or buttocks, or the clothing covering any of these areas without consent; any intentional or attempted touching of another with any of these body parts without consent; making another person touch you or themselves with or on any of these body parts without consent; or any intentional or attempted bodily contact of a sexual nature, though not involving contact with/of/by a person's genitalia, groin, breast, or buttocks without consent.
 - ii. ***Non-Consensual Sexual Intercourse or Penetration*** is any penetration (anal, oral, or vagina) or attempted penetration (anal, oral, or vaginal), however slight, with any object (finger, tongue, penis, inanimate object, etc.) without consent or forcing someone to penetrate himself or herself with any object, however slight, without consent.
- b. **Sexual exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not meet the definition of sexual assault. Sexual

exploitation includes prostituting another person, non-consensual visual or audio recording of sexual activity, non-consensual distribution of photos or other images of an individual's sexual activity or intimate body parts, non-consensual voyeurism, knowingly transmitting HIV or an STD to another, or exposing one's genitals to another in non-consensual circumstances.

- c. **Dating violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. A social relationship of a romantic or intimate nature means a relationship which is characterized by the expectation of affection or sexual involvement between the parties. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical abuse. Dating violence does not include acts covered under the definition of domestic violence.

- d. **Domestic violence** is a felony or misdemeanor crime of violence committed:
 - i. by a current or former spouse or intimate partner of the victim;
 - ii. by a person with whom the victim shares a child in common;
 - iii. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
 - iv. by a person similarly situated to a spouse of the victim under the laws of the Commonwealth of Virginia; or
 - v. by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family laws of the Commonwealth of Virginia.

Domestic violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical abuse.

- e. **Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - i. fear for his or her safety or the safety of others; or
 - ii. suffer substantial emotional distress, meaning significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

A "course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about, a person, or interferes with a person's property.

13. Sexual Violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent including the criminal acts of rape, sexual assault, sexual

battery, sexual abuse, and sexual coercion as found under Virginia Law (Virginia Code Article 7 of Chapter 4 of Title 18.2).

14. Consent is given by voluntary words or actions that communicate a willingness to engage in a specific sexual activity. The existence of consent will be inferred from all of the facts and circumstances. Consent may be withdrawn at any time. Silence, in and of itself, is not consent. Lack of protest or resistance is not consent. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. A previous or current relationship does not imply consent to sexual activity. Past consent does not imply future consent. Consent cannot be obtained by the use of force, which includes physical violence, threats, intimidating behavior, and/or coercion.

- a. **Physical Violence** means that a person is exerting control over another person through the use of physical force. Examples of physical violence include, but are not limited to, hitting, punching, slapping, kicking, restraining, choking, strangling, and brandishing or using any object as a weapon.
- b. **Threats** are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include, but are not limited to, threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
- c. **Intimidation** is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person can use their size or physical power in a manner that constitutes intimidation (e.g., by blocking access to an exit.)
- d. **Coercion** is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual activity. When a person makes clear that they do not want to participate in a particular form of sexual contact or sexual intercourse, that they want to stop, or that they do not want to go beyond a certain sexual activity, continued pressure can be coercive. In evaluating whether coercion was used, the frequency of the application of pressure, the intensity of the pressure, the degree of isolation of the person being pressured, and the duration of the pressure are all relevant factors.

Consent can never be obtained from someone who is incapacitated, either voluntarily or involuntarily, or through the acts of others. Consent cannot be given by the following individuals:

- Individuals who are asleep or unconscious;
- Individuals who are incapacitated due to the influence of drugs, alcohol, medication, or other substances;
- Individuals who are unable to consent due to a mental or physical condition; and

- Individuals who are minors.

If an individual knows or reasonably should know someone is incapable of giving consent, it is a violation of this policy to engage in sexual activity with that person.

15. Incapacitation: An incapacitated person is incapable of giving consent. Incapacitation means that a person lacks the ability to make informed, reasonable judgments about whether or not to engage in sexual activity. An incapacitated person lacks the ability to understand the who, what, when, where, why, and/or how of the sexual interaction. A person is not necessarily incapacitated merely as a result of consuming alcohol, drugs, medications, and/or other substances. The impact of alcohol, drugs, medications, or other substances varies from person to person.

16. Alcohol, Medications, and Other Drugs: The use of alcohol, medications, and other drugs by the Responding Party is not an excuse for being unable to assess if the Reporting Party gave consent.

17. Complicity is any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of a violation of this policy by another person. Complicity is prohibited by this policy.

18. Retaliation is intimidation, threats, harassment, and other adverse action taken or threatened against (1) any Reporting Party or person reporting or filing a complaint alleging Prohibited Conduct or (2) any person cooperating in the investigation of an allegation of Prohibited Conduct including testifying, assisting, or participating in any manner in an investigation pursuant to this policy. Action is generally deemed adverse if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy. Retaliation may result in disciplinary or other action independent of the sanctions or Supportive Measures imposed in response to the underlying allegations of Prohibited Conduct.

E. Role of the Title IX Coordinator

The Title IX Coordinator (Coordinator) oversees the assessment of allegations of sexual and gender-based discrimination and interpersonal violence as well as the investigation and resolutions of all reports and complaints made by all students, employees, and visitors to the campus of the alleged Prohibited Conduct in accordance with this policy. The Coordinator may delegate certain investigative responsibilities while maintaining oversight of the investigation.

The Coordinator does not serve as an advocate for either the Reporting Party or the Responding Party.

The Coordinator is charged with

- Coordinating RBC's compliance with federal civil rights laws.
- Explaining to all identified parties the procedures for the investigation including required confidentiality.
- Providing all identified parties with information about obtaining medical and counseling services.
- Providing information regarding making a criminal report.
- Providing information related to receiving advocacy services off-campus, and guidance on other RBC and community resources.
- Offering to coordinate with other RBC leadership, when appropriate, to implement Supportive Measures.
- Explaining to all involved parties the process of a prompt, adequate, reliable, and impartial investigation, including the opportunity for both Reporting Party and the Responding Party to identify witnesses and provide other evidence.
- Explaining to all identified parties the right to have a personal advisor present and to review and respond to the allegations and evidence.
- Explaining to the parties and witnesses that retaliation for reporting alleged Prohibited Conduct, or participating in an investigation of an alleged violation, is strictly prohibited and that any retaliation should be reported immediately and will be promptly addressed.
- Conducting annual training to students and RBC employees.

Allegations of Prohibited Conduct against the Coordinator should be made to the RBC Provost or President.

F. Expectations

Under this policy, all parties can expect:

1. Written notice of an investigation, including the potential policy violation and nature of the allegation;
2. An academic record hold and academic transcript notation for alleged violations of this policy during the investigation when the Responding Party is a student. An academic transcript notation will remain if the sanction at the conclusion of the investigation is suspension or dismissal;
3. The opportunity to offer information, present evidence, and/or identify witnesses relevant to the allegation;
4. Reasonable notice of any meeting where the party's presence is requested;
5. The opportunity to have an advisor of choice for matters involving Sexual Misconduct, including the right to have that advisor attend any meetings where the party's presence is requested;
6. Timely and equal access to any information that will be used during the investigation and related meetings;
7. A reasonable length of time to prepare any response;

8. Prompt and equitable resolution;
9. Written notice of any extension of time for good cause;
10. Privacy to every extent possible in accordance with this policy and legal requirements;
11. The opportunity to challenge a member of the Coordinator's Office for actual bias or conflict of interest;
12. Written notice of the outcome, imposition of any sanction(s) and the rationale for each, appeal procedures, changes to the finding and/or sanction(s), if any, after an appeal, and when the outcome and sanctions become final;
13. Reasonably available Supportive Measures;
14. Limited amnesty as stated in Section O;
15. No tolerance for false information as stated in Section P; and
16. Protection against retaliation, harassment, or intimidation.

Under this Policy, the complainant's prior sexual behavior will be considered irrelevant and any similar evidence will be inadmissible unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove to consent.

G. Privacy and Confidentiality

RBC is committed to protecting the privacy of any individual involved in the investigation and resolution of a report or complaint under this policy. With respect to any report or complaint under this policy, RBC will make reasonable efforts to protect the privacy of participants while balancing the need to gather information to assess the matter, take steps to eliminate the reported conduct, prevent its recurrence, and address its effects.

Privacy and confidentiality have distinct meanings under this policy.

Privacy: Privacy means that information related to a report or complaint will be shared with a limited circle of RBC employees identified as needing to know in order to assist the assessment, investigation, and resolution of the matter. While not subject to a legal obligation of confidentiality, these individuals will respect the privacy of all individuals involved in the process and will not share information except as necessary to effectuate this policy or as required by law.

The privacy of student education records will be protected in accordance with RBC's policy for compliance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records generally is protected by various federal and state laws depending upon the situation. Access to an employee's personnel records in Virginia may be restricted in accordance with the Virginia Freedom of Information Act, and, where applicable, Department of Human Resources Management (DHRM) Policy 6.05.

Confidentiality: Confidentiality exists in the context of laws that protect certain relationships, including licensed health-care professionals and employees providing administrative support

for such licensed health-care professionals, mental health providers, counselors, and ordained clergy, all of whom may engage in confidential communications under Virginia law. These individuals cannot violate their obligation of confidentiality unless (i) given written consent to do so by the person who disclosed the information; (ii) there is a concern of serious physical harm to self or others; (iii) the conduct involves suspected abuse or neglect of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order.

Confidential Resources: The RBC's Office of Counseling Services and the community resources listed in Section H are Confidential Resources. Confidential Resources will not disclose information about a report of a possible violation of this policy to RBC (including the Coordinator's Office or Campus Police) without the Reporting Party's permission (subject to the exceptions listed above under Confidentiality).

Clery Act Reporting: Pursuant to the Clery Act, RBC includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about the individuals involved in the incident. The Clery Act also requires RBC to issue timely warnings to the RBC community about certain crimes that have been reported and may continue to pose a serious or continuing threat to the campus. Consistent with the Clery Act, RBC will ensure, to every extent possible, that personally identifying information of Reporting Parties is not included in timely warnings.

H. Confidential Resources and Procedures for Anyone Who Has Experienced Sexual Misconduct

In a supportive manner, RBC will assist anyone who has been a victim of Sexual Misconduct by implementing the procedures set out herein. Due to the potential seriousness and sensitivity of the investigations involved, it is important to undertake these investigations properly. Preserving the evidence is often a key step of successful investigation of alleged Sexual Misconduct.

1. **Recommended Steps:** For anyone who has experienced Sexual Misconduct, the following steps are recommended.
 - a. Go to a safe place.
 - b. **Off-Campus Confidential Resources (Medical Assistance):** For your safety and confidential care, report promptly to one or more of the following Confidential Resources:

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| <u>Southside Regional Medical Center</u> | <ul style="list-style-type: none"> • 200 Medical Park Blvd. Petersburg, VA 23805 • (804) 756-5000 • Physical evidence may be usable if proper procedures are followed for evidence collection within 72 hours of the assault. <p>http://www.srmconline.com/SouthsideRegional-MedicalCenter/home.aspx</p> |
| <u>Nearest Medical Facility or Emergency Room</u> | <p>http://www.rbc.edu/wpcontent/uploads/2016/03/Counseling-Community-Agency-ReferralGuide-March142016.pdf</p> |

c. **Confidential Resources (Support and Counseling):** For professional and confidential counseling support, the following on-campus and off-campus Confidential Resources can be contacted.

i. On-Campus Confidential Resource:

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| <u>RBC Office of Counseling Services</u> | <ul style="list-style-type: none"> • (804) 862-6263 • Library 2nd Floor, Room 208 <p>https://www.rbc.edu/academics/student-support-team/counseling-services/</p> |
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ii. Off-Campus Confidential Resources:

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| <u>District 19 Community Services Board</u> | <ul style="list-style-type: none"> • (804) 862-8000 • Toll-Free: (866) 365-2130 <p>http://www.d19csb.com/</p> |
| <u>The James House: Intervention/Prevention</u> | <ul style="list-style-type: none"> • (804) 458-2704 • 24-Hour Hotline: (804) 458-2840 <p>https://thejameshouse.org/contact/</p> |
| <u>Virginia Family Violence and Sexual Assault Hotline</u> | <ul style="list-style-type: none"> • 24-Hour Toll-Free number: (800) 838-8238 <p>https://vanetwork.org/contact/</p> |

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| <p><u>Employee Assistant Program (EAP)</u></p> | <ul style="list-style-type: none"> • Counseling provided by all health plans offered to Commonwealth of Virginia employees and their dependents • COVA CARE and HDHP: 1-855-223-9277 • COVA HealthAware: 1-855-414-1901 https://www.dhrm.virginia.gov/employeebenefits/employee-assistance |
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- d. Contact a trusted friend or family member.
- e. **Preservation of Evidence:** It is your right to have evidence collected and retained anonymously by law enforcement while you consider whether to pursue criminal charges. Pending a decision to report, it is strongly encouraged that you take immediate steps to preserve all evidence that might support a future report. Evidence preservation is enhanced in the following ways:
- i. Do not wash your hands, bathe, or douche. Do not urinate, if possible.
 - ii. Do not eat, blow your nose, drink liquids, smoke, or brush your teeth if oral contact took place.
 - iii. iii. Keep the clothing worn when the assault took place. If you change clothing, place the worn clothing in a paper bag (evidence deteriorates in plastic).
 - iv. Do not destroy any physical evidence that may be found in the vicinity of the assault. The victim should not clean or straighten the location of the crime until law enforcement officials have had an opportunity to collect evidence.
 - v. Tell someone all the details you remember and/or write them down as soon as possible.
 - vi. Maintain text messages, voice mails, pictures, online postings, video, and other documentary or electronic evidence that may corroborate a report.

The Reporting Party shall have the right to file a report with law enforcement and the option to be assisted by the Coordinator’s Office and other College authorities in notifying the proper law enforcement authorities of the alleged Sexual Misconduct.

RBC officials (excluding Campus Police) receiving complaints or reports of possible Sexual Misconduct will follow the procedures listed in this policy. Campus Police will follow departmental procedures in accordance with standard law enforcement policies.

2. Resources for Anyone who has experienced Sexual Misconduct

- a. Anyone who reports Sexual Misconduct to the Coordinator's Office, the Office of Counseling Services, or Campus Police shall receive information outlining resources on and off campus and options.
- b. Students and employees will be assisted with available options, such as changing academic, transportation, parking, work, and living arrangements, after alleged Sexual Misconduct. Safety arrangements like no-contact orders may be made available as deemed necessary and reasonable.

3. Reporting to the Police

In an emergency, contact 911 or contact the Campus Police on campus at (804) 862-6111. Someone may also walk into the Department of Campus Safety and Police and speak directly to a RBC police officer.

The Coordinator will make all Reporting Parties aware of the right also to file a report with the Campus Police or local law enforcement. RBC will comply with all requests by the Campus Police or local law enforcement for cooperation in investigations. Such cooperation may require the Coordinator to temporarily suspend the fact-finding aspect of an investigation detailed in the procedures below while the Campus Police or other law enforcement agency gathers evidence. If the investigation is suspended, any Supportive Measures remain in place and available. The Coordinator's Office will promptly resume its investigation as soon as notified by the Campus Police or other law enforcement agency that it has completed the evidence gathering process. Otherwise, the investigation will not be altered or precluded on the grounds that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

Some conduct in violation of this policy may also be a crime under Virginia law. Individuals are encouraged to report incidents of Sexual Misconduct to law enforcement, even if the reporting individual is not certain if the conduct constitutes a crime. Crimes dealing with minors must be reported to law enforcement.

A Protective Order may be available and enforced through the appropriate law enforcement agency. Protective Orders are legal documents issued by a judge or magistrate to protect the health and safety of a person who is alleged to be a victim of any act involving violence, force, or threat that results in bodily injury or places that person in fear of death, sexual assault, or bodily injury.

4. Reporting to RBC

- a. The Coordinator and Deputy Title IX Coordinator are trained to help individuals find the resources they might need, explain all reporting options, and respond appropriately to conduct of concern, including retaliation.
- b. There is no time limit for filing a complaint or report under this policy. However, Reporting Parties should report as soon as possible to maximize RBC's ability to respond. Failure to report promptly may result in the loss of evidence and/or jurisdiction over the Responding Party if he/she is no longer affiliated with RBC and therefore limit the investigation.
- c. Any complaints or reports of Prohibited Conduct can be made to the Coordinator or Deputy Title IX Coordinator.

Title IX Coordinator: The RBC Title IX Coordinator is responsible for overseeing all Title IX complaints and other allegations of discrimination, harassment, or retaliation, and for identifying and addressing any problems that arise during the review of such complaints.

Title IX Contact Information:

Stacey Sokol
Director of Online and Continuing Education Programs/Title IX Coordinator
11301 Johnson Road, South Prince George, VA 23805
Maze Hall Room 110
(804) 862-6100 x8603 (Office)
(804) 712-7141 (Mobile)
titleix@rbc.edu or ssokol@rbc.edu

Candi Pearson
Accounts Payable Manager/Deputy Title IX Coordinator
11301 Johnson Road, South Prince George, VA 23805
Maze Hall Room 204
Phone: (804) 862-6100 x6458
cpearson@rbc.edu

5. Responsible Employee (Mandatory Employee Reporting of Sexual Misconduct):

All RBC employees, including full-time, part-time, volunteers, and student employees, are Responsible Employees for purposes of reporting Sexual Misconduct as defined in Section D. Student employees are Responsible Employees when they receive information while acting in their capacity as an RBC employee.

Once in receipt of information regarding Sexual Misconduct, the Responsible Employee must directly report any information regarding the alleged incident to the Coordinator's Office

without delay and should otherwise respect the privacy of the individuals involved. No RBC employee shall undertake any independent efforts to determine whether or not the report or complaint has merit or can be substantiated before reporting it to the Coordinator.

The report from the Responsible Employee should include all relevant details about the name of the alleged perpetrator (if known), the name of the person who experienced the alleged conduct, the name of others involved in the incident, and the date, time and location of the incident. The Responsible Employee may directly contact the Coordinator’s Office.

Before someone reveals this type of information to the Responsible Employee, the Responsible Employee should make every effort to ensure that the person understands the Responsible Employee’s obligation and that the person has the option to request confidentiality and share the information with a Confidential Resource either on campus or off campus as listed in Section H.

When a Responsible Employee fails to make a required report to the Coordinator’s Office, RBC is unable to acquire the information necessary to stop, remedy, and prevent Sexual Misconduct. As a result, the employee may face disciplinary consequences up to and including termination of employment.

6. Reports of Other Discrimination/Harassment Not Sexual Misconduct:

RBC administrators, supervisors, faculty, coaches, and assistant coaches should report other non-Title IX conduct in violation of College policy without undue delay after the incident. Any such report may be made orally or in writing, including electronic mail to the Coordinator.

Reporting to External Agencies

Inquiries or complaints concerning discrimination/harassment on the basis of race, color, national origin, sex including sexual misconduct, age disability, or retaliation may be directed to the United States Department of Education's Office for Civil Rights (OCR) at the number, email and cite listed in the charts below.

| | |
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| <u>OCR National Headquarters</u> | U. S. Department of Education Office of Civil Rights Lyndon Baines Johnson Building 400 Maryland Avenue, SW Washington, D.C. 20202-1100 800-421-3481 Email: OCR@ed.gov http://www2.ed.gov/about/offices/list/ocr/index.html |
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| <u>OCR Regional Headquarters</u> | U.S. Department of Education Office of Civil Rights Lyndon Baines Johnson Building 400 Maryland Avenue, SW Washington, D.C. 20202-1475 202-453-6020 Email: OCR.DC@ed.gov |
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Inquiries or complaints concerning discrimination and harassment of **employees** may also be directed to the following:

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| <u>EEOC National Headquarters</u> | U.S. Equal Employment Opportunity Commission 131 Main Street NE, Washington, D.C. 20507 202-663-4900 Email: info@eeoc.gov http://www.eeoc.gov/ |
| <u>EEOC Local Office</u> | U.S. Equal Employment Opportunity Commission 400 N. Eight Street, Suite 350 Richmond, VA 23219 1-800-669-4000 https://www.eeoc.gov/field/richmond/ |
| <u>Commonwealth of Virginia EEO Services</u> | Department of Human Resource Management Office of Equal Employment and Dispute Resolution 101 North 14 th Street, 12 th Floor Richmond, VA 23219 1-800-533-1414 804-225-2136 http://www.dhrm.virginia.gov/equalemploymentopportunity |

I. Timely Warning

RBC is required by federal law, the Clery Act, to issue timely warnings for reported incidents that pose a substantial threat or danger to members of the campus community. RBC will ensure, to every extent possible, that identifying information is not disclosed, while still providing enough information for members of the campus community to make decisions to address their own safety in light of the potential danger.

J. Initial Assessment

Upon the receipt of a complaint or report, the Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns. The Coordinator will take steps to determine whether the matter falls within the purview of Title IX. Once the Coordinator has determined whether that the matter involves an alleged violation of this policy, jurisdiction over the matter will be conferred to the Coordinator's Office.

If the Coordinator determines that the Coordinator's Office does not have jurisdiction, the Coordinator shall forward the report to the appropriate office and notify the parties about other appropriate resources.

Following the initial assessment and a determination that the allegations fall within the jurisdiction of the Title IX Coordinator, the College's *Sexual and Gender-based Harassment and Interpersonal Violence Procedures Guideline* will be followed by the Title IX Coordinator. These procedures will be followed to bring those prohibited acts that fall within this policy to resolution.

K. Academic Record Hold and Transcript Notation

The College, pursuant to Virginia Code § 23.1-900, is required by law to notate the academic transcript of each student who has been suspended for, has been permanently dismissed for, or withdraws from the institution while under investigation for an offense involving sexual violence.

In those matters in which a student withdraws during the pendency of an investigation, the student's transcript will be placed on administrative hold until the conclusion of the Title IX investigative, hearing and appeal process.

L. Request for Confidentiality and Anonymous Reporting

Any requests for confidentiality concerning matters of possible Sexual Violence will be handled as stated in Section G. All other requests for confidentiality will be handled as described below.

1. Request for Confidentiality or No Formal Action Be Taken: If the Reporting Party requests confidentiality or that the report not be pursued, RBC may be limited in the actions it is able to take and its ability to respond while respecting the request. The Reporting Party will be asked to sign a statement indicating a desire for confidentiality or that an investigation not be pursued, and the Coordinator will take all reasonable steps to respond to the report consistent with the request. The Coordinator will consider the reasons for the request, including concerns about continued safety of the Reporting Party and the members of the RBC community, but the ability to maintain or respect the request is expressly limited by the threat assessment required in Section M for reports of Sexual Violence. The Coordinator may initiate consultation with appropriate RBC leadership concerning the

request for confidentiality or no formal action be taken. The Coordinator shall make the ultimate decision on whether to conduct an informal or a formal investigation or to respond in another manner, including use of Supportive Measures as stated in Section N. If it is determined that an investigation must proceed, the Coordinator will inform the Reporting Party prior to notifying the Responding Party about the investigation, but in no event will the Reporting Party be required to participate in the investigation.

Confidential Resources: The RBC Office of Counseling Services and the community resources listed in Section H are Confidential Resources. Confidential Resources are not permitted to disclose information about a report of a possible violation of this policy to RBC (including the Coordinator's Office or Campus Police) without the Reporting Party's permission (subject to the exceptions listed above under Confidentiality in Section H).

Reports or Complaints Involving Minors: If the Reporting Party is (or was at the time of the incident) a minor (under 18), the Campus Police shall be notified.

2. **Anonymous Report:** The Coordinator's Office may be limited in its ability to investigate an anonymous report unless sufficient information is furnished to enable the Coordinator's Office to conduct a meaningful and fair investigation.

M. Threat Assessment for Sexual Violence

In addition to the steps taken during the initial assessment as stated in Section J, RBC shall submit every allegation of Sexual Violence that is alleged to have occurred (i) against any RBC student; or (ii) on campus, in or on a RBC building or property, or on public property that is within the campus or immediately adjacent to and accessible from campus to the Review Committee pursuant to Virginia Code §23.1-806.

1. **Review Committee:** The Review Committee shall consist of employees who have received appropriate training regarding this policy.

The Review Committee operates pursuant to Virginia Code §23.1-806 and has access, under Virginia law, to certain otherwise confidential information, including law enforcement records and criminal history information, as provided in Virginia Code §§19.2-389 and 19.2-389.1; health records, as provided in Virginia Code §32.1-127.1:03; College disciplinary, academic, and/or personnel records; and prior reports of misconduct maintained by the Title IX Coordinator. The Review Committee shall have access to all available facts and circumstances, including personally identifiable information, and may seek additional information about the reported incident through any other legally permissible means.

2. **Risk Factors:** The Review Committee shall consider the following factors to determine whether there is an increased risk of the Responding Party committing additional acts of Sexual Misconduct or other violence, including, but not limited to:
 - a. Whether the Responding Party has prior arrests, reports, and/or complaints related to any form of conduct in violation of this policy or any history of violent behavior;
 - b. Whether the Responding Party has a history of failing to comply with any RBC No-Contact Order, other RBC protective measures, and/or any legal Protective Order;
 - c. Whether the Responding Party has threatened to commit violence or any form of Sexual Misconduct;
 - d. Whether the alleged conduct involved multiple Responding Parties;
 - e. Whether the alleged conduct involved physical violence;
 - f. Whether the allegation reveals a pattern of conduct in violation of this policy (i.e., by the Responding Party, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
 - g. Whether the alleged conduct was facilitated through the possible use of “date rape” or similar drugs or intoxicants;
 - h. Whether the alleged conduct occurred while the Reporting Party was unconscious, physically helpless, or unaware that the conduct in question was occurring;
 - i. Whether the Reporting Party is (or was at the time of the alleged incident) under the age of 18; and/or
 - j. Whether any other aggravating circumstances or signs or predatory behavior are present.

3. **Review Committee Procedures and Determinations:** Upon the Coordinator’s receipt of information of an alleged act of Sexual Violence, the Review Committee shall meet, either in person or via telephone, within seventy-two (72) hours to review the information and shall meet again as necessary as new information becomes available.

If the Review Committee determines that there is a significant and articulable threat to the health or safety of the Reporting Party or to any other member of the campus community and that disclosure of personally identifiable information is necessary in order to protect the health or safety of the Reporting Party or other members of the campus, the representative from Campus Police on the Review Committee shall immediately disclose such information to the law enforcement agency that would be responsible for investigating the alleged act of Sexual Violence. This determination will be based on the Risk Factors listed above in Section M.2. If the Review Committee cannot reach a consensus, the representative of the Campus Police on the Review Committee shall make the determination. This disclosure shall be for the purposes of investigation and other actions by law enforcement. The Coordinator shall immediately notify the Reporting Party if such a disclosure is made. The provisions of this paragraph shall not apply if the law enforcement agency responsible for investigating the alleged incident is located outside of the United States.

In cases in which the alleged act of Sexual Violence would constitute a felony violation under Virginia law (Article 7 of Chapter 4 of Title 18.2), the representative of the Campus Police on the Review Committee shall inform the other members and shall within twenty-four (24) hours consult with the appropriate Commonwealth Attorney and provide to him or her the information received by the Review Committee without disclosing personally identifiable information, unless such information was disclosed to a law enforcement agency pursuant to the paragraph above. If such consultation does not occur and any other Review Committee member individually concludes that the alleged act of Sexual Violence would constitute a felony violation under Virginia law, that member shall within twenty-four (24) hours consult the appropriate Commonwealth Attorney and provide to him or her the information received by the Review Committee without disclosing personally identifiable information, unless such information was already disclosed to the Campus Police as allowed above.

The Review Committee also shall consider and recommend other appropriate or necessary actions beyond any already in place.

4. **Actions Following Threat Assessment:** At the conclusion of the Threat Assessment, the Coordinator and representative of the Campus Police shall each retain (i) the authority to proceed with any further investigation or adjudication allowed under state or federal law and (ii) independent records of the review committee's determination considerations, which shall be maintained under applicable state and federal law.

N. Supportive Measures

RBC will offer and take reasonable and appropriate Supportive Measures to assist and protect the Reporting Party, the Responding Party, or a member of the campus community and facilitate the Reporting Party's continued access to campus employment or education programs and activities during the initiation, investigation, and resolution of complaints or reports under this policy. If, in the judgment of the Coordinator and other RBC leadership, the safety or well-being of any member of the campus community may be jeopardized by the presence on campus of the Responding Party, interim remedies may be provided to address the short-term effects of harassment, discrimination, and/or retaliation and to prevent further violations. These measures may be remedial (designed to protect the safety and well-being of all parties involved and continued access to educational opportunities), protective (involving action against a Responding Party), or both. Remedial measures are available regardless of whether a Reporting Party pursues an investigation under this policy.

RBC will consult with the Reporting Party and Responding Party before taking Supportive Measures to the greatest degree possible. Both parties will be notified in writing concerning the imposition of Supportive Measures that impact them.

Supportive Measures are not intended to be permanent resolutions. They may be amended or withdrawn as additional information is obtained and upon final resolution of the report or complaint.

Supportive Measures may include, but are not limited to:

1. Academic arrangements;
2. Housing and dining arrangements;
3. Work-related arrangements;
4. Limitation on extracurricular or athletic activities;
5. No-contact order, that serves as notice to both parties that they must not have verbal, electronic, written, or third party communication with one another;
6. Limitations on access to campus, RBC facilities, and RBC events;
7. Referral and coordination of counseling and health services;
8. Training for students, faculty, and/or staff;
9. Interim suspension/immediate restriction;
10. Administrative leave with or without pay; and
11. Any other measures that may be arranged by RBC (to the extent reasonably available) to ensure the safety and well-being of the parties.

O. Amnesty

RBC encourages the reporting of violations of this policy. Alcohol or drug violations should not deter reporting an incident. When conducting an investigation, RBC's primary focus shall be on addressing the alleged Prohibited Conduct and not on alcohol and drug violations that may be discovered or disclosed. RBC does not condone underage drinking or illicit drug use; however, except in compelling circumstances, RBC will extend limited amnesty from consequences related to drug or alcohol use to Reporting Parties, witnesses, and others who in good faith report alleged incidents of Prohibited Conduct and/or participate in an investigation. RBC may provide referrals to counseling and may require educational initiatives, rather than disciplinary sanctions, in such cases.

P. False Information

RBC is a community grounded in honor; our Honor Code serves as a guide to our college experience. It provides clarity on behavior expected of all members of the community. Engaging in Prohibited Conduct is a serious offense against an individual and the community. It requires every person's efforts in order to address this unacceptable behavior. Those efforts are undermined by the presentation of false information.

Any individual who knowingly provides false information, who intentionally withholds information or who intentionally misleads individuals who are involved in the investigation or resolution of a complaint or report of Prohibited Conduct shall be subject to disciplinary action

which can include dismissal or termination from RBC. However, that an allegation of Prohibited Conduct cannot be proven by a preponderance of the evidence is not evidence of a false complaint or report.

Q. Violations of Law

Behavior that violates this policy also may constitute a crime under the laws of the jurisdiction in which the incident occurred. For example, the Commonwealth of Virginia criminalizes and punishes sexual assault, dating/domestic violence, sexual exploitation, stalking, and physical assault. The criminal statutes that may apply in cases of Physical Assault and Dating/Domestic Violence are found in various sections of Chapter 4, Articles 1 (Homicide) and 4 (Assaults and Bodily Wounding), of Title 18.2 of the Code of Virginia. The criminal statutes relating to Sexual Assault are found in Sections 18.2-61 to 18.2-67.10 of the Code of Virginia. Section 18.2-60.3 of the Code of Virginia defines and identifies the penalty for criminal stalking. Finally, Sections 18.2-386.1 and 18.2-386.2 of the Code of Virginia provide for criminal penalties in some cases of Sexual Exploitation.

This compilation of criminal statutes is not exhaustive but is offered to notify the RBC community that, in some cases, the alleged conduct may also constitute a crime under Virginia law, which may subject a person to criminal prosecution and punishment in addition to any sanctions under this policy.

R. Education and Awareness

1. For information, please visit the RBC Title IX page at <http://www.rbc.edu/myrbc/rbctitle-ixcoordinator/>
2. The Coordinator together with other institutional leaders oversees education, training, and awareness programs on Prohibited Conduct for students and employees, including training on primary prevention, bystander intervention, risk reduction, consent, and other pertinent topics.
 - a. Incoming students and new employees shall participate in primary prevention and awareness programming as part of their orientation.
 - b. Returning students and employees shall have ongoing opportunities for additional training and education.
3. This policy shall be disseminated widely to the RBC community through electronic mail, publications, websites, new employee orientation, student orientation, and other appropriate channels of communication.

S. Academic Freedom and Free Speech

This policy does not allow curtailment or censorship of constitutionally protected expression. In addressing all complaints and reports of alleged violations of this policy, RBC will take all permissible actions to ensure the safety of students and employees while respecting the free

speech rights of students and employees. This policy does not in any way apply to curriculum and curriculum decisions or abridge the use of particular textbooks or curricular materials.

T. Documentation and Record Keeping

The Coordinator shall maintain, in a confidential manner, for at least ten (10) years, paper or electronic files of all complaints and reports, witness statements, documentary evidence, written investigation reports, resolutions, and appeals and associated documents.

This policy is maintained by the Title IX Coordinator. The Coordinator shall review it on an annual basis to capture evolving legal requirements, evaluate resources available to the parties, and assess the effectiveness of the investigation and resolution process. Any suggestions and comments shall be sent to the Coordinator throughout the year for consideration. Any proposed amendments shall be submitted to the appropriate administrative body for further review and approval. This policy shall be amended in any manner deemed necessary without the need for further approval from the RBC Board of Visitors.

U. Related Documents

Title IX of the Education Amendments of 1972.

<https://www.federalregister.gov/documents/2020/08/10/2020-07057/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal><https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

Virginia Code § 23.1-900. Academic transcripts; suspension, permanent dismissal, or withdrawal from institution. <https://law.lis.virginia.gov/vacode/title23.1/chapter9/section23.1-900/>