



Policy and Procedures for Addressing and Resolving Allegations of Sexual Harassment Under Title IX and Other Forms of Sexual Misconduct.

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I. Introduction

This Administrative Regulation establishes the College's policies and procedures for addressing and resolving allegations of Sexual Harassment under Title IX of the Education Amendments of 1972. This regulation also applies to acts of retaliation as defined in the Title IX implementing regulations and types of Sexual Misconduct not contemplated by the Title IX implementing regulations. This regulation does not include Sexual Harassment or other forms of sex or gender-based discrimination covered by Title VII. The definition of Sexual Harassment under Title IX is codified in the U.S. Department of Education's Regulations implementing Title IX. Conduct that is Sexual Harassment under Title IX is not necessarily Sexual Harassment under Title VII or Kentucky law and vice versa. The College's Title IX Coordinator administers this regulation. The Title IX Coordinator administers two (2) separate policies that address Sexual Misconduct and other forms of discrimination and harassment: "Policy on Discrimination and Harassment" "Policy and Procedures for Addressing and Resolving Allegations of Sexual Harassment Under Title IX and other forms of Sexual Misconduct" Sexual Harassment and other forms of sex or gender based discrimination that fall outside of Title IX are prohibited. Sexual Misconduct that falls outside of the definition of Title IX is prohibited. The College's Title IX Coordinator has discretion to determine appropriate charge for reported behavior, including which policy applies to reported

behavior. Questions about which policy applies in a specific instance should be directed to the College's Title IX Coordinator at (859) 272-5225.

II. Policy

The College for Technical Education is committed to providing a safe learning, and working environment for all members of the College community. Consistent with this commitment, the College prohibits Sexual Harassment under Title IX which includes quid pro quo sexual harassment, hostile environment sexual harassment, domestic violence, dating violence, sexual assault, stalking, and retaliation against any person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this regulation (collectively, "Sexual Harassment"). This regulation also prohibits sexual assault, domestic violence, dating violence, stalking, and sexual exploitation (collectively "Sexual Misconduct") that fall outside the definitions of those behaviors as defined as Sexual Harassment under Title IX. These forms of Sexual Harassment and Sexual Misconduct are unlawful, undermine the character and purpose of the College, and will not be tolerated.

Employees or students who violate this regulation may face disciplinary action up to and including termination or expulsion. The College will take prompt and equitable action to prevent Sexual Harassment and Sexual Misconduct, discipline anyone who violates this policy, prevent further prohibited behavior, and remedy the effect of any such conduct. The College conducts ongoing prevention, awareness, and training programs for faculty, staff, and students to achieve the goals of this regulation.

Every member of the College community is responsible for fostering an environment free from Sexual Harassment and Sexual Misconduct. All members of the College community are encouraged to take reasonable and prudent actions to prevent or stop any acts of Sexual Harassment and Sexual Misconduct. The College will support and assist community members who take such actions.

III. Scope

A. This Administrative Regulation applies to all members of the College community, including faculty, staff, students, and authorized volunteers.

B. This regulation applies to any acts of Sexual Harassment or Sexual Misconduct that occur in the College's Education Program or Activity.

Education Program or Activity means any on campus or any other College event, or circumstance over which the College exercised substantial control over both Respondent and the context in which the alleged violation occurred. This includes any activity or location off College premises if the activity is authorized, initiated, sponsored, aided, or supervised by the College.

C. This regulation applies to any acts of Sexual Misconduct that occur on campus or any other College event, or circumstance over which the College exercised substantial control over both Respondent and the context in which the alleged violation occurred. This includes any activity or location off College premises if the activity is authorized, initiated, sponsored, aided, or supervised by the College.

D. This regulation applies to any acts of Sexual Misconduct that occur outside the context of College employment or a College education program or sponsored activity whenever the conduct has continuing

adverse effects on or creates a hostile environment for students, employees, or third parties while on property owned, leased, or controlled by the College, or in any College employment or education program or activity.

E. College faculty, staff, and students may utilize services of the College's Title IX coordinator regardless of where the behavior they experienced occurred or regardless of the identity of the accused individual.

IV. Definitions

The following definitions are for purposes of this Administrative Regulation and are not intended to replace or summarize the United States Code, the Code of Federal Regulations, or the Kentucky Revised Statutes.

A. Affirmative Consent

"Affirmative Consent" means a voluntary expression of willingness, permission, or agreement to engage in specific sexual activity throughout a sexual encounter. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other to engage in the sexual activity. Consent cannot be inferred from the absence of a "no"; consent, verbal or otherwise, must be obtained.

Consent cannot be granted by an individual who:

- (1) Is incapacitated as defined by this Regulation (See "Incapacitation" below);
- (2) Has been compelled by force or threat of force; or
- (3) Is coerced by supervisory or disciplinary authority;

B. Complainant

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment or Sexual Misconduct. If Complainant is a minor or legally incompetent, the parents or guardians of Complainant may act on Complainant's behalf. However, the individual who experienced the behavior, not the parents or guardians, is the Complainant.

C. Complicity

"Complicity" means any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of an act of prohibited conduct by another person.

D. Dating Violence

"Dating Violence", is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition in 34 U.S.C. 12291(a) (10), which defines Dating Violence as violence committed by a person—

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship is determined based on a consideration of the following factors:
 - a. The length of the relationship.

b. The type of relationship.

c. The frequency of interaction between the persons involved in the relationship

E. Domestic Violence

“Domestic Violence” is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition in 34 U.S.C. 12291(a)(8), which defines Dating Violence as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Kentucky, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Kentucky.

F. Employee

“Employee” means a faculty employee or staff employee, regardless of employee type.

G. False Allegation

“False Allegation” means an allegation that was made in bad faith, e.g. an allegation that the person making knew to be untrue at the time it was made. The mere fact an investigation concluded there was no Probable Cause or that a hearing panel did not find the accused responsible does not mean the allegation was made in bad faith.

H. Force or Coercion

“Force or Coercion” means: (a) threats of serious physical, emotional, or psychological harm to or physical restraint against any person, (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person, or (c) threats of employment or academic repercussions for failing to engage in the requested behavior.

I. Formal Complaint

“Formal Complaint” means a document filed and signed by the Title IX Coordinator, or their designee, alleging Sexual Harassment or Sexual Misconduct against a Respondent and requesting that the College investigate the allegation of Sexual Harassment or Sexual Misconduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the College.

J. Incapacitated

“Incapacitated” means a person is impaired to such a level that they lack the physical and/or mental ability to make informed, rational judgments and/or cannot appraise or control their own conduct or make decisions with the degree of understanding they typically possess. A person may be impaired by an intoxicant, by mental illness or deficiency, or by physical illness or disability to the extent that personal decision-making is impossible. A person can be intoxicated without being incapacitated. A person who is below the statutory age of consent is incapacitated.

K. Making a False Statement

“Making a False Statement” means providing a statement or information that the person providing such statement or information knows to be false at the time it is provided.

L. Physical assault

“Physical Assault” means threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Physical assault also involves sexual or gender-based harassment, dating or domestic violence, or is part of a course of conduct under the stalking definition.

M. Preponderance of the Evidence Standard

“Preponderance of the Evidence” means superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

N. Probable Cause

“Probable Cause” means a reasonable basis for believing that a violation of this policy may have occurred.

O. Respondent

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment or Sexual Misconduct. A Respondent is a party to any live hearing that occurs because of an investigation pursuant to this regulation. If Respondent is a minor or legally incompetent, the parents or guardians of Respondent may act on Respondent’s behalf. However, the individual accused, not the parent or guardian, is the Respondent.

P. Responsible Employee

“Responsible employee” means any College employee who:

- (1) Has the authority to act to redress Sexual Harassment;
- (2) Has been given the duty of reporting incidents of Sexual Harassment or any other misconduct to the Title IX Coordinator; or
- (3) Is an individual reasonably believed to have this authority or duty.

Q. Retaliation

“Retaliation” for Sexual Harassment under Title IX is defined at 34 CFR 106.7. Under that definition, neither the College nor any faculty member, employee, student, or authorized volunteer may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or the implementing regulations or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in

an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for violations of college regulations and policies that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited behavior. Individuals who have made a complaint of Sexual Harassment or Sexual Misconduct under this policy are protected from behavior that infringes upon their ability to participate in any education program or activity regardless of the outcome of any investigation or hearing. Individuals who encourage others to retaliate on their behalf may also be found responsible for Retaliation. Any allegations of Retaliation should be reported to the Title IX Coordinator.

R. Sexual Assault

“Sexual Assault” is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition 20 U.S.C. 1092(f)(6)(A)(v), which defines Sexual Assault as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

A sex offense is any act directed against another person, without the consent of the second person, including instances where the second person is incapable of giving consent.

(1) Sexual Assault: Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of a second person, without the consent of the person being violated.

(2) Sexual Assault: Fondling is defined as the touching of the private parts of another person without the consent of the second person, including instances where the second person is incapable of giving consent because of age or because of temporary or permanent mental incapacity.

(3) Sexual Assault: Incest is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(4) Sexual Assault: Statutory Rape is defined as sexual intercourse with a person who is under the statutory age of consent. Sexual assault also includes all sex offenses as stated in Kentucky Revised Statutes 510.010 through 510.140.

S. Sexual Harassment for Title IX Purposes

“Sexual Harassment” for Title IX Purposes “means conduct on the basis of sex that occurs in the College’s education program or education activity and satisfies one or more of the following:

(1) An employee of the College conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct. This type of sexual harassment is also referred to as Quid Pro Quo.;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College’s education program or activity. This type of sexual harassment is also referred to as Hostile Environment.; or

(3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a) (10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a) (30).

T. Sexual Exploitation

“Sexual Exploitation” means taking non-consensual or abusive sexual advantage of another and includes situations in which the conduct does not fall within the definitions of Sexual Harassment or Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

Examples of sexual exploitation include, but are not limited to the following:

- (1) Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give affirmative consent to sexual activity;
- (2) Allowing third parties to observe private sexual activity from a hidden location (e.g., a closet) or through electronic means (e.g., via Skype or live streaming of images);
- (3) Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person’s intimate parts (including genitalia, groin, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy);
- (4) Recording or photographing private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts, or buttocks) without consent;
- (5) Disseminating or posting images of private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts, or buttocks) without consent;
- (6) Human Trafficking; and
- (7) Knowingly exposing another person to a sexually transmitted infection or virus without the other’s knowledge.

U. Sexual Misconduct

“Sexual Misconduct” includes Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Sexual Exploitation when that behavior does not meet the jurisdictional requirements to constitute Sexual Harassment under Title IX.

V. Stalking

“Stalking” is a form of Sexual Harassment or Sexual Misconduct. The federal regulation uses the definition in 34 USC § 12291(a) (30), which is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for his or her safety or the safety of others; or
- (2) Suffer substantial emotional distress.

Course of conduct means two (2) 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, surveils, threatens, or communicates to or about a person or interferes with a person's property.

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

Reasonable person means a reasonable person under similar circumstances and with similar identities to the person who alleges stalking.

W. Student

"Student" means any person who is enrolled in courses at The College for Technical Education. Student status includes those taking classes in person, or via online. Student status also includes persons on a leave of absence (LOA).

Persons who are not enrolled at The College for Technical Education but who are participating in or attempting to participate in the education program or activity of the College are not students. However, such persons may serve as a Complainant or a Respondent.

Persons who withdraw after allegedly violating this Policy or who graduated after allegedly violating this Policy are not students but are still subject to discipline under this regulation.

X. Supportive Measures

"Supportive Measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter Sexual Harassment and/or Sexual Misconduct.

Supportive measures may include but are not limited to the following:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of class schedules;
- Mutual restrictions on contact between the parties;
- Leaves of absence;
- Other similar appropriate measures.

Any supportive measure provided to Complainant or Respondent will remain confidential to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator, or their designee, is responsible for coordinating the effective implementation of supportive measures.

Y. Title IX Coordinator

“Title IX Coordinator” means the College official responsible for investigating complaints of Sexual Harassment, resolving potential violations informally, and facilitating the hearing process.

Z. College Counsel

“College Counsel” means the attorney(s) designated by the College to prosecute the alleged violation of this policy on behalf of the College. The College is a party to a live hearing occurring pursuant to this regulation. College Counsel does not have authority to request dismissal of a charged violation of this policy.

AA. College Official

“College Official” means any person employed or otherwise authorized by the College to perform assigned administrative or professional responsibilities

V. Prohibited Acts

A. Every member of the College community is prohibited from:

- (1) Engaging in Sexual Harassment or Sexual Misconduct;
- (2) Being complicit in the commission of Sexual Harassment or Sexual Misconduct;
- (3) Retaliating in any manner against an individual who makes a complaint or participates in the investigation of a complaint of Sexual Harassment or Sexual Misconduct;
- (4) Interfering with procedures to investigate or redress a complaint of Sexual Harassment or Sexual Misconduct;
- (5) Making a false statement during the investigation or hearing of a complaint of Sexual Harassment or Sexual Misconduct; and
- (6) Making an intentionally false accusation of Sexual Harassment or Sexual Misconduct through the College’s procedures.

B. Any member of the College community who engages in one of these prohibited acts against any other member of the College community may be subject to corrective action and appropriate sanctions

VI. Reporting Allegations and Filing Formal Complaints

A. A report of alleged misconduct is not the same as a Formal Complaint. A Formal Complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment or Sexual Misconduct against a Respondent and requesting that the College investigate the allegation of Sexual Harassment or Sexual Misconduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an education program or activity of the College.

B. Any person may report Sexual Harassment or Sexual Misconduct, regardless of whether the person reporting is the person alleged to be the victim of conduct that could constitute Sexual Harassment or Sexual Misconduct. A report may be made in person, by mail, by telephone or by electronic mail, using the contact information listed for the Title IX Coordinator or the College Director, or assistant College Director, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or

written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

Victor Vinson, Title IX Coordinator
1165 Centre Parkway, Suite 120
(859) 272-5225
vvinson@cte.edu

C. An incident may be reported without filing a written complaint. Individuals who need assistance filing a report may contact the Title IX Coordinator at (859) 272-5225.

D. There is no statute of limitation for reporting behavior that may be a violation of this regulation.

E. Any Responsible Employee who witnesses or is made aware of an incident of Sexual Harassment or Sexual Misconduct must report it to the Title IX Coordinator as soon as possible. Reports of behavior that constitute an immediate threat to the safety or security of the person experiencing the behavior or the campus community should be made to the local police department. College employees who are not employed by one of the offices identified in section I, below, are Responsible Employees and are not confidential and are not permitted to hold a report in confidence. Failure of Responsible Employees to report an incident of Sexual Harassment or Sexual Misconduct in a timely manner may result in corrective action, up to and including termination of employment.

F. Individuals designated as Campus Security Authorities are required by law to report certain crimes, including alleged sex offenses, stalking, dating or domestic violence, and sexual exploitation, to the local police department. These reports are made for statistical purposes, without the inclusion of identifying information of the parties.

G. Anonymous reports may be made. However, the College has limited ability to address anonymous reports.

H. The College provides information on pursuing criminal or other legal action, health care, counseling, and other support services available to students, faculty, staff, and visitors who have made an allegation of Sexual Harassment or Sexual Misconduct.

I. The College resolves Formal Complaints of Sexual Harassment and Sexual Misconduct within a period that is reasonable given the nature of the complaint. The College will keep the Complainant and Respondent informed of the progress of the proceedings.

J. Individuals who experience sexual assault, dating violence, or domestic violence are strongly encouraged to seek medical attention and be examined for physical injury, the presence of sexually transmitted diseases, or pregnancy as a result of rape.

NOTE: An individual who is considering making a criminal complaint or taking other legal action should seek medical care as soon as possible after the assault. It is important for the individual to not bathe, douche, or change clothing before the medical examination in order to avoid inadvertently removing important evidence. The kind of evidence that supports a legal case against an accused should be collected as soon as possible, at maximum within ninety-six (96) hours of an assault.

VII. Rights of the Complainant and Respondent

A. The Complainant has the right to choose whether to file a Formal Complaint with the College.

B. Complainant has the right to access supportive measures regardless of whether they file a Formal Complaint.

C. In addition to pursuing administrative penalties and remedies, the Complainant maintains the right to pursue criminal or other legal action.

D. Respondent has the right to be presumed innocent. It is the College's responsibility to prove that Respondent engaged in Sexual Harassment or Sexual Misconduct.

E. Both the Complainant and Respondent have the right:

(1) To have the College respect their rights provided by the United States and Kentucky Constitutions;

(2) To be treated with respect by College officials;

(3) To take advantage of college support resources;

(4) To experience a safe educational environment;

(5) To have up to two (2) Advisors, including attorneys, present during any investigation, pre-hearing meeting, or hearing;

(6) To have an attorney represent them at any hearing;

(7) To refuse to have an allegation resolved through conflict resolution procedures;

(8) To receive amnesty for certain student misconduct, such as alcohol or drug violations, that occurred ancillary to the incident;

(9) To be free from retaliation for reporting violations of this regulation or cooperating with an investigation;

(10) To have complaints heard in accordance with College procedures;

(11) To be informed in writing of the outcome/resolution of the complaint, any sanctions where permissible, and the rationale for the outcome where permissible;

(12) To have minimal interaction or contact with Respondent or Complainant; and

(13) To request supportive measures from the College to ensure minimal interaction or contact with Respondent or Complainant.

F. The College will keep confidential to the greatest extent possible the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment or Sexual Misconduct, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness. The College may be required to disclose the identity of individuals when necessary to provide due process to the Respondent or to comply with federal or state law.

VIII. Corrective Actions and Disciplinary Procedures

A. For students, faculty, and staff, the College will utilize the procedures outlined to address and resolve allegations of Sexual Harassment or Sexual Misconduct. The Title IX Coordinator, or designee, has the authority to determine whether allegations fall within the purview and appropriate charges.

B. The recommended range of sanctions for students includes disciplinary probation, counseling assessment, social restrictions, social suspension, suspension, and expulsion. Additional sanctions also may be imposed when appropriate. Both the Complainant and Respondent will be informed of the outcome of the corrective action or disciplinary process.

C. The recommended range of sanctions for faculty and staff includes suspension, counseling, or termination of employment. Additional sanctions also may be imposed when appropriate. Both the Complainant and Respondent will be informed of the outcome of the corrective action or disciplinary process.

IX. Education

Regular and ongoing education regarding the issues addressed in this regulation is available for all members of the College community. Training on Discrimination and Harassment, including Title IX, is offered by the Title IX Coordinator, or designee, on a regular basis for students and employees.

References and Related Materials

TITLE IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 – 1688

Department of Education, Title IX regulations, 34 C.F.R. § 106.1, et seq.

Higher Education Act of 1965, 485(f) (20 U.S.C. 1092(f)), Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).

Violence Against Women Reauthorization Act of 2013, (Pub. Law 113-4)