

TITLE: STUDENT SEXUAL MISCONDUCT

POLICY NO: 1-14

EFFECTIVE DATE: 04/20/93

VCCS POLICY NO: [6.5.5](#)

REVISED DATE: 07/07/15

I. Purpose:

To reaffirm and communicate the college's standards related to gender-based behavior and/or behavior of a sexual nature and to outline procedures to address and report complaints of sexual misconduct by students.

II. Definitions:

Complainant: a person who lodges a complaint alleging that an incident or incidents of sexual misconduct have occurred and who may be an employee, student, non-student, or non-employee.

Complaint: a verbal or written allegation of sexual misconduct that is communicated to a faculty or staff member, or administrator at the college.

EEO officer: the college's associate vice president of human resources.

Employee: full- and part-time teaching faculty, administrative and professional faculty, classified staff, and wage/hourly employees.

Force: the use of physical violence and/or imposing on someone physically to gain sexual access or benefit, which includes threats, intimidation (implied threats), and coercion that overcomes resistance resulting in consent under duress. Examples of threats and coercion include, "Have sex with me or I will hit you." or "Okay, don't hit me; I'll do what you want."

Informal proceedings: the first option within the sexual misconduct procedure that, when possible and safe, provides the opportunity for the college to resolve the sexual complaint through constructive discussion with the individual involved in the complaint, and which is optional.

Non-consensual sexual contact: any intentional sexual touching, however slight, with any object, by a man or women upon a man or woman, that is without consent and/or by force. Examples of sexual contact include intentional contact with the breasts, buttock, groin, or genitals; or touching another with any of these body parts; or making another touch an individual with any of these body parts; or any intentional bodily contact in a sexual manner though not involving contact with/of/by the breasts, buttock, groin, genitals, mouth, or other orifice.

Non-employee: individuals who are not employed by the college.

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Preponderance of evidence: the standard of judgment that indicates the weight of the evidence is sufficient to determine that the issue in question is more likely true than not.

Respondent: a person against whom a sexual misconduct complaint has been filed.

Retaliation: intimidation, threats, harassment, or other adverse action threatened or taken against a complainant or third party.

Sexual assault: sexual intercourse without consent, including rape (whether by acquaintance or stranger), sodomy, or other forms of sexual penetration. To constitute lack of consent, the acts must be committed either by force, threat of force, intimidation, or through use of the victim's mental helplessness of which the accused was aware or should have been aware. Mental helplessness includes incapacitation by alcohol or other drugs. Sexual assault also includes intentionally touching, either directly or through clothing, the victim's genitals, breast, thighs, or buttocks without the victim's consent as well as touching or fondling of the accused by the victim when the victim is forced to do so against his or her will.

Sexual exploitation: behavior that occurs when an individual takes non-consensual or abusive advantage of another for his or her benefit, or to benefit or advantage anyone other than the one being exploited, and that does not otherwise constitute any of the other sexual misconduct offenses. Examples of sexual exploitation include but are not limited to, invasion of privacy, prostituting another student, non-consensual taping or audio recording of another's sexual activity, going beyond the boundaries of consent (such as allowing friends to hide in the closet, etc., while one has consensual sex), engaging in voyeurism, knowingly transmitting a sexually transmitted infection or virus (such as HIV), exposing one's genitals in a non-consensual circumstance (or inducing another to expose their genitals), and sexually-based stalking or bullying.

Sexual harassment: unwelcome, gender-based verbal or physical conduct that is sufficiently severe, persistent, or so pervasive that it has the effect of unreasonably interfering with, denying, or limiting someone's ability to participate in or benefit from the college's educational programs or activities and is based on power differentials, the creation of a hostile environment, or retaliation.

Sexual misconduct: behavior that includes but is not limited to, non-consensual sexual intercourse (or attempts to commit the same), non-consensual sexual contact (or attempts to commit the same), sexual harassment, and sexual exploitation.

Student: any person currently enrolled in at least one (1) credit, non-credit, or developmental course offered by the college.

Verbal/Written misconduct: direct propositions of a sexual nature, subtle and/or persistent pressure for sexual activity, conversation, jokes or stories of a sexist or sexual nature, sexual remarks about a person's clothing, body, or sexual relations, or the display of sexually explicit materials, if shown to be unwelcome and sufficiently pervasive or severe a condition to affect academic performance or employment, and which may constitute sexual harassment.

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III. Policy:

- A. J. Sargeant Reynolds Community College (Reynolds) is an educational institution that strives to provide students and other members of the community with an academic learning environment that is free from sexual misconduct or gender-based discrimination. As such, Reynolds shall not tolerate sexual misconduct which may be inclusive of sexual harassment, non-consensual sexual intercourse, non-consensual sexual contact, or sexual exploitation. The college considers these types of behaviors serious threats to the integrity of the community and shall pursue all charges. Moreover, certain acts may be criminal and subject to both criminal and civil legal actions. Students who violate this policy shall have college charges processed against them in the normal manner of due process provided by college rules.
- B. This policy is applicable to any student who is alleged to have committed an act of sexual misconduct against another student without regard to the location of the alleged incident. This includes acts committed in an online environment. Further, the college may consider complaints against students of sexual misconduct towards individuals who are not students when the conduct described in the complaint constitutes a sufficient risk to the college community. Such behavior can be considered during breaks when it is expected that the accused student shall return to the college. In instances when an allegation is made against a student and the student does not return over a period of time and becomes inactive, that student shall be subject to the college's [Denial or Revocation Procedures](#), as outlined in [Reynolds Policy No. 1-11](#), Admissions.
- C. This policy is also applicable to any student, employee, or non-employee who believes he/she is the victim of, or who has witnessed, sexual misconduct by a student.
- D. Any student, employee, or non-employee who feels as though he/she is the victim of sexual misconduct by a college employee should follow [Reynolds Policy No. 3-7](#), Employee Sexual Misconduct. Reynolds Policy No.1-14, Student Sexual Misconduct is not to be utilized in the event the individual accused of the sexual misconduct behavior is a full-time or part-time Reynolds employee, unless the part-time employee is considered to be affiliated with the college for educational purposes and not because of employment.
- E. The college urges complainants of sexual misconduct to seek assistance from any appropriate resource. These resources might include a local hospital, a counselor/therapist, local police, the college's Department of Police, etc. Complainants may also seek assistance from the Virginia Sexual and Domestic Violence Hotline at 1-800-838-8238. Situations of an emergency nature should be reported immediately to the college's Department of Police or by calling 523-5911 or, if not on campus, by calling 911.
- F. In order to assure that sexual misconduct is prevented, the college strongly encourages individuals who believe they have experienced sexual misconduct to report the alleged misconduct according to the procedures described in Section IV of this policy.

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- G. It is a violation of college policy for anyone to retaliate against anyone making a complaint of sexual misconduct or against anyone cooperating in the investigation, which includes testifying as a witness. Any acts of retaliation should be reported promptly to the Office of Student Affairs.
- H. In instances where violations of [Reynolds Policy No. 1-35](#), Student Conduct, may have occurred and are directly related to the alleged act of sexual misconduct, sanctions for those violations may be issued at the conclusion of this process.
- I. Attorneys or advisors may only participate in formal hearings for either the complainant or respondent. The attorney/advisor's role is limited to providing advice to his or her client to the extent that his or her activity is not disruptive to the hearing process. In instances where an attorney/advisor's actions are disruptive, he or she shall be removed from the hearing and the hearing shall proceed.
- J. In all sexual misconduct complaints, the college—regardless of whether or not the complainant wants to pursue resolution—shall conduct an investigation. In instances where the complainant chooses not to pursue any resolution in order to maintain confidentiality, then he or she shall be advised of the limitations of the college. In determining whether or not the college shall proceed with a complaint, the college shall weigh several factors that include the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations, if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act. The college shall document the decision by the student. However, this decision does not preclude the complainant from changing his or her decision and seeking action through this policy at a later point in time. The college's ability to pursue a case after an extended period may be limited provided the accused student or witnesses are no longer enrolled or evidence is no longer available.
- K. The college shall take prompt and reasonable action to support and protect the complainant, including taking interim steps before the conclusion of the investigation and hearing. These actions may include no contact orders, interim suspensions, and/or modifying the complainant's academic schedule or college employment. The college shall seek to minimize any unnecessary or unreasonable burden on either party so long as the complainant is allowed to continue his or her academic work or employment with the college. Violations of these arrangements or orders may result in further disciplinary action.
- L. When an interim suspension is administered, the college shall make every effort to expedite an interim suspension hearing in order to determine if the respondent is able to return to the campus. Interim suspensions are administered when it is believed that the presence of a student on campus is considered to be an imminent danger to the health or safety of him/herself, members of the college community or the public, or when his or her presence involves serious disruption of normal college operations. These decisions

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are measures conducted to mitigate any risk. The respondent must be able to demonstrate that his or her presence on campus shall not present an imminent danger or cause serious disruption. The college shall work with the student temporarily suspended to continue participation in class(es) in an alternate format. However, financial and academic consequences due to the lack of compliance with the terms of the suspension are the responsibility of the student.

- M. Any member of the college community who believes he or she may be a victim of sexual misconduct by a student, or a student who believes he or she was falsely accused of sexual misconduct, may seek private legal consultation and file criminal and/or civil charges in the Commonwealth of Virginia, as appropriate. The college encourages this action. In this option, the state accuses the alleged perpetrator, but the complainant may serve as a witness for the state. The Department of Police shall assist the student with understanding this process.
- N. In instances where individuals are at a distance, the college shall utilize technologies to assist with the investigation and hearing process from a distance.
- O. If the alleged offender is a not a student or employee of the college, the college shall take prompt and reasonable action, which may include contacting an authority who may address the behavior or preventing the accused individual from participating in activities at or with the college.
- P. Any student making an intentionally false accusation of sexual misconduct shall be subject to the provisions of [Reynolds Policy No. 1-35](#), Student Conduct.

IV. Procedures:

- A. A person who believes that he or she may have experienced or witnessed sexual misconduct but is uncertain as to whether a complaint is justified or whether he or she wishes to initiate a formal complaint, may find it helpful to discuss his or her concerns confidentially and informally with the college's Title IX coordinator, who is the vice president of student affairs (VPSA). The VPSA can be contacted/located in the Office of Student Affairs, 1651 E. Parham Road, Room 350, Georgiadis Hall, (804) 523-5296. Upon receipt of a complaint, the Title IX coordinator will obtain additional information regarding the complaint by interviewing possible witnesses, obtaining statements, or obtaining other information relevant to the case.

The Title IX coordinator, along with the college's EEO officer, will schedule a meeting with the complainant to review the information. In addition, the Title IX coordinator and EEO officer will:

- advise the individual of his/her rights under Reynolds Policy No. 1-14, Student Sexual Misconduct, as well as his/her options to voice complaints. These options include: the college's informal procedure, the college's formal

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procedure, or outside legal proceedings. Collegial and outside legal proceedings are not mutually exclusive and may be used simultaneously.

- determine, in consultation with the complainant, how the college will proceed under Reynolds Policy No. 1-14, Student Sexual Misconduct.

The Title IX coordinator will investigate the matter. If there is insufficient evidence to support a charge, the complaint will be closed with no further action.

B. Informal procedure

If the informal procedure is selected, the Title IX coordinator and EEO officer will schedule a meeting with the respondent. At the meeting, the following will occur:

1. The respondent will be informed of the charge(s) and advised of his/her rights under Reynolds Policy No. 1-14, Student Sexual Misconduct.
2. The respondent will be provided the opportunity to review information related to the case. In instances where there is a concern about the victim's or witnesses' safety, the college reserves the right to withhold the identity of the individual(s) until satisfactory resolution is achieved at the informal level or until the formal proceedings.
3. The respondent will be provided the opportunity to respond to the charge(s).
4. If the respondent chooses not to respond to the charges or no satisfactory resolution is achieved, the Title IX coordinator and the EEO officer will inform the respondent of the formal procedure, and the respondent's rights under the formal procedure, and proceed to schedule a formal hearing.
5. If the respondent chooses to respond to the charge(s) and handle the matter via the informal procedure, the Title IX coordinator and EEO will record the information and recess to determine if there is sufficient evidence to make a determination on the case. During the deliberation if additional information is needed, the Title IX coordinator and EEO officer may request the additional information or clarification from all individuals involved.
6. Within ten (10) business days, unless delayed for additional investigation, the Title IX coordinator and EEO officer will issue a written decision to the respondent. A decision notice will also be sent to the complainant. Satisfactory resolution in the informal proceedings may result in sanctions to the responsible student, as outlined in section C. Unless waived, both individuals will have the right to an appeal, as described in section D.

C. Formal procedure

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The purpose of the formal procedure is to provide an objective process for the handling of a complaint of sexual misconduct.

1. Upon determination that an informal resolution cannot be achieved, the Title IX coordinator will inform the complainant that the college will proceed with a formal hearing.
2. Within ten (10) business days, the Title IX coordinator will schedule a hearing and organize a panel to hear the complaint.
3. The review panel will consist of three (3) members: one (1) faculty member, one (1) administrative staff member, and one (1) student. Furthermore, to ensure an impartial panel, no member will have had prior involvement in the complaint process or have direct or indirect supervisory or teaching responsibility for either party.
4. The Title IX coordinator will notify the panel members, complainant, and respondent in writing regarding the time and place of the hearing. The hearing will be scheduled no more than fifteen (15) business days after a determination to proceed to a formal hearing has been made. In addition, the respondent will be:
 - a. provided with a written statement of the charges.
 - b. provided with the names of persons serving on the hearing panel, a list of potential witnesses against him or her, and the nature of their proposed testimonies. The respondent may request the removal of a member of the hearing panel on the grounds of personal bias, by submitting a written statement to the Title IX coordinator specifying the basis of the challenge with supporting information no later than three (3) business days prior to the hearing. The Title IX coordinator will determine whether to sustain or deny the challenge within two (2) business days. If the request is sustained, a replacement will be appointed to serve on the hearing panel.
 - c. advised of the right to appear alone, or with an advisor who may advise the accused but not question witnesses or participate in any part of the hearing. The Title IX coordinator must be notified of the name of the advisor no later than three (3) business days prior to the hearing.
 - d. allowed to examine, in advance, any written evidence or exhibits that the college has acquired; reciprocally, the respondent will provide the college any evidence or information that the respondent plans to submit during the hearing. All evidence or exhibits will be submitted to the Office of Student Affairs three (3) business days prior to the hearing panel.

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- e. advised of the right to argue in his or her behalf, present evidence and witnesses, and question witnesses present.
 - f. advised of the right to appeal the decision.
5. The hearing will be closed to the public. The VPSA, or designee, will appoint the administrative staff member or faculty member as the hearing panel officer. The hearing officer will have the duty of maintaining order at the hearing and, therefore, will have the right to exclude any disruptive party or witnesses from the hearing. If the respondent fails to appear for the hearing, he or she waives the right for further appeal and the disciplinary action taken by the college cannot be appealed. The hearing panel may be taped or transcribed. In addition, the following order will be observed:
- a. Order of presentation
 - (1) opening statement of complainant
 - (2) opening statement of respondent
 - (3) presentation of evidence by the complainant
 - (4) presentation of evidence by the respondent
 - (5) calling of witnesses by complainant
 - (6) cross examination of witnesses by respondent
 - (7) questions by panel members (if necessary)
 - (8) calling of witnesses by respondent
 - (9) cross examination of witnesses by complainant
 - (10) questions by panel members (if necessary)
 - (11) closing statement by respondent
 - (12) closing statement by complainant
 - (13) private deliberation by panel
 - b. Only tangible evidence of which all parties have had an opportunity to review in advance will be permitted to be introduced at the hearing.
 - c. Both sides have the right to question witnesses. If a called witness does not appear, the hearing panel may consider their written or taped statements; the statement will be weighted accordingly by the hearing panel as the respondent has no opportunity to cross examine the witness making the written or taped statement. Student questioning of witnesses may be modified for sexual misconduct cases to protect the safety of the complainant. Witnesses will be excluded from the hearing room and, at the appropriate time, brought in individually before the panel.
 - d. The burden of proof will be a preponderance of evidence, and the panel will decide if this standard is met by a simple majority vote.
 - e. The panel will recommend to the VPSA, or designee, a sanction in accordance with section IV.C. Sanctions.

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- f. The complainant and respondent will be notified of the panel's decision and reasons for the decision, in writing, within ten (10) business days and may be required to meet with the Title IX coordinator.
- g. The complainant or respondent may appeal the findings of the hearing panel with the VPSA or the executive vice president (EVP). (Refer to section IV.D. Appeals.)

C. Sanctions

In the instance that a student is found to be responsible for violating the college's Student Sexual Misconduct policy, sanctions will be imposed. In general, the goal of the sanction is to educate, rehabilitate, or deter inappropriate behavior, rather than simply punish students.

The severity of the sanction will be in relation to the severity of the violation. Generally speaking, cases of sexual assault will result in a sanction of suspension or expulsion from the college. Sanctions will be applied consistently, so that students violating the same standard or policy receive similar penalties.

The following sanctions may be imposed:

1. **Admonition:** a written statement to a student indicating that the behavior resulting in the reprimand is unacceptable and a violation of Reynolds Policy No. 1-14, Student Sexual Misconduct. Continuation or repetition of this conduct could result in further disciplinary action.
2. **Educational project or community-service project:** a project or assignment on campus or in the community that will provide the student with the opportunity to observe and learn specific valued human behaviors related to his or her conduct (e.g., participation in a prevention of sexual harassment workshop). Written evidence of satisfactory completion will be required.
3. **Probation:** exclusion from the privilege of participation in college-related activities, including the holding of any student office for a specified period.
4. **Suspension:** exclusion from attending the college as a student for a definite period of time, not to exceed one (1) year.
5. **Dismissal/expulsion:** permanent separation from the college as a student.

Sanctions may be applied separately or in combination with another sanction. Previous behavior or conduct violations will be considered in determining a sanction.

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In instances of suspension or dismissal, a student may be required to provide a psychological assessment prior to re-enrollment, in order to determine his or her readiness to return to the college.

Denial of readmission may be imposed upon a student who has violated Reynolds Policy No. 1-14, Student Sexual Misconduct, and has withdrawn from the college prior to or during disciplinary proceedings.

The college reserves the right to pursue any and all legal remedies, and such rights and remedies are specifically reserved.

D. Appeals

Students may appeal the decisions made and/or sanctions given in the formal procedure to the VPSA, if the VPSA was not involved in the informal or formal procedures, or to the EVP if the VPSA was involved in the informal or formal procedures. The basis for the appeal will be limited to these grounds:

- excessively severe sanction
- new or newly-discovered evidence that may substantially affect the outcome of the case
- procedural error, which substantially affected the outcome of the case

The appeal must be submitted in writing to the VPSA or executive vice president's office within ten (10) business days following the hearing panel's decision.

Failure to file a written appeal within the time period presumes the student's acceptance of the hearing panel's decision, and he or she waives his/her right to further appeal.

An appeal is not a rehearing; it represents a procedural safeguard for the student and should not be filed for any other purpose. In the appeal process, the burden of proof rests on the student requesting the appeal. The student must show that it is more likely than not that one or more of the above grounds for appeal have merit. If there is adequate reason to believe that one or more of the grounds of appeal have merit, an appeal meeting will be scheduled by the VPSA or EVP.

1. Once the student files an appeal, the VPSA or EVP will be furnished a copy of the hearing file and records from the Office of Student Affairs.
2. Within ten (10) business days of receipt of the student's appeal, the VPSA or EVP will notify the student of the date, time, and place of a meeting for the appeal.
3. During the appeal meeting, the VPSA or EVP will review all information presented during the informal and formal procedures and give the student an opportunity to present information to support his/her appeal.

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4. Within ten (10) business days of the appeal meeting, the student will be notified by either the VPSA or the EVP of the decision.
5. The decision of the VPSA or EVP is final.

E. Determination letter and memorandum opinion

1. The determination letter will contain only the following information: the name of the respondent, whether the respondent has been found responsible or not responsible for the charges of sexual misconduct, and the sanction imposed, if any, provided that the sanction(s) directly relate to the complainant. As guaranteed by federal law, both the respondent and the complainant have a right to this information. College policy neither encourages nor discourages further disclosure of the determination letter by either party. The college encourages a student who wishes to re-disclose the determination letter to consult with legal counsel before doing so.
2. The memorandum opinion will contain the finding of facts. The memorandum opinion is both an education record and confidential record of the hearing and may not be disclosed except as authorized by law (see [Reynolds Policy No.1-26](#), Student Privacy and Release of Student Information).

F. Confidentiality

All matters will be handled in compliance with [Reynolds Policy No.1-26](#), Student Privacy and Release of Student Information, and the Family Educational Rights to Privacy Act (FERPA). In the event that formal litigation or external complaint procedures require disclosure, it may be necessary for the college to comply with formal requests for such records under subpoena. These records may be considered in the event that other formal complaints are filed against the same individual. Records will be maintained by the Office of Student Affairs for a period of five (5) years from the date of graduation of the respondent.

G. Consensual relationships

Consenting romantic and sexual relationships between student and employee, while not expressly forbidden by the college, are generally discouraged and deemed unwise.

H. Education and prevention

The college is committed to helping all students achieve a realistic understanding of the effects of sexual misconduct for themselves, victims, and society. Above and beyond potential disciplinary action resulting from sexual misconduct, the college recognizes the need and responsibility to provide information regarding sexual misconduct. The following activities and services will be offered at the college in an effort to prevent sexual misconduct:

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1. published information on sexual misconduct and the prevention of sexual misconduct in:
 - a. the College Success Skills course (SDV 100)
 - b. student handbooks
 - c. employee handbooks
 - d. college website
2. web-based training opportunities provided by the Office of Human Resources, with 24-hour-a-day access, on the topics of sexual misconduct and the prevention of sexual misconduct. The web-based links for the online training opportunities will be published on the Professional Development and Renewal website located on the college's intranet site on InsideReynolds.
3. classroom/face-to-face training provided by the Office of Human Resources on the topic of sexual misconduct and the prevention of sexual misconduct for full-time and part-time faculty and staff every semester. Dates and times of the classroom training opportunities will be published on the Professional Development and Renewal website located on the college's intranet site on InsideReynolds.
4. appropriate announcements by the Office of Student Affairs and the Office of Human Resources to ensure that college publications, courses, and training opportunities are routinely announced and disseminated throughout the college community.
5. a list of referral services that specialize in sexual assault to be maintained by the Department of Police and the Office of Student Affairs. Students requesting assistance will be referred to the appropriate public agencies, while making every effort to protect the individual's confidentiality.
6. a list of employee referral services that specialize in sexual assault to be maintained by the Office of Human Resources for college faculty and staff. The Commonwealth's Employee Assistance Program (EAP) is available to full-time state employees (who participate in the Commonwealth's healthcare program) for a wide array of family and personal concerns and issues. Part-time college employees will be referred to community resource programs. Additionally, in all circumstances, employees requesting assistance will be referred to the appropriate agencies, while making every effort to protect the individual's confidentiality.

V. Other Information:

[2001 Guidance \(Title IX\)](#)

[April 4, 2011 Office of Civil Rights Dear Colleague Letter on Sexual Violence](#)

[Sexual Assault Victim's Bill of Rights](#)

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[Virginia Sexual and Domestic Violence Action Alliance](#), 1-800-838-8238

[Reynolds Policy No. 1-35](#), Student Conduct

[Reynolds Policy No. 3-7](#), Employee Sexual Misconduct