

# **TCI POLICY ON SEX/GENDER HARASSMENT, DISCRIMINATION AND MISCONDUCT**

## **INTRODUCTION**

Members of the TCI College of Technology community (“TCI” or the “College”), guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The College believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator’s attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated.

The College uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt,” “innocence” and “burdens of proof” are not applicable, but the College never assumes a responding party is in violation of College policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

## **TITLE IX COORDINATOR**

The College's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports directly to the President of the College, and is housed in the office of Human Resources, Room 112. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator:

Name: Shirley Erves  
Title: Title IX Coordinator  
Office of Human Resources  
Location/Address: Room 112

(212) 594-4000 ext.5265

Email: [serves@tcicollege.edu](mailto:serves@tcicollege.edu)

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)  
United States Department of Education, Office for Civil Rights  
Region 2 – New York  
Jacob Javits Federal Building  
26 Federal Plaza - Suite 3312  
New York, NY 10278  
Voice Phone (800) 368-1019  
FAX (212) 264-3039  
TDD (800) 537-7697  
Web: <http://www.ed.gov/ocr>

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the President and CEO of TCI College of Technology at 212.330.0860 or via email at [gsantiago@tcicollege.edu](mailto:gsantiago@tcicollege.edu).

## **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT**

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

## **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

### **Types of Sexual Misconduct**

Sexual misconduct offenses include, but are not limited to:

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)
4. Sexual Exploitation

### **Sexual harassment**

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.<sup>1</sup>

Anyone experiencing sexual harassment in any College program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
  - unreasonably interferes with, denies or limits someone's ability to

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<sup>1</sup> Purpose or intent is not an element of sexual harassment.

participate in or benefit from the College's educational [and/or employment], and/or social program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus
- Explicit sexual pictures are displayed in a professor's office
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in his/her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- A student grabbed another student by the hair, then grabbed her breast and put

his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

### Non-consensual sexual contact

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force<sup>2</sup>.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

### Non-consensual sexual intercourse

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

### Sexual exploitation

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<sup>2</sup> The use of force is not “worse” than the subjective experience of violation of someone who has sex without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct charge, but charges under the code for the additional assaultive behavior.

Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

#### Additional definitions and concepts

- **Affirmative Consent** is defined as a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding the willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

The following six principles, along with the above definition, will be used to evaluate whether affirmative consent was given:

1. Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
2. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
3. Consent may be initially given but withdrawn at any time.
4. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or by being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of

alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

5. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
  6. When consent is withdrawn or can no longer be given, sexual activity must stop.
- **Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).
    - Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
    - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
  - Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
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  - This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.
  - For reference to the pertinent state statutes on sex offenses, please see <http://ypdcrime.com/penal.law/article130.htm>, Section 304 of the Violence Against Women Reauthorization Act of 2013.

#### **Other Misconduct falling under this Policy (when sex or gender-based)**

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;

4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as
  - a. Repeated and/or severe
  - b. Aggressive behavior
  - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
  - d. That is not speech or conduct otherwise protected by the 1st Amendment.
6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other;
  - a. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
  - b. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
  - c. A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
  - d. Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.
7. Stalking
  - a. Defined:
    - i. A course of conduct
    - ii. Directed at a specific person
    - iii. On the basis of actual or perceived membership in a protected class
    - iv. That is unwelcome, AND
    - v. Would cause a reasonable person to feel fear
  - b. Examples of Stalking:
    - i. A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus

place of employment requesting that they go out on a date together.

- ii. A graduate student working as a on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together."
8. Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

### **Examples of Sexual Misconduct**

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the College Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
2. Jiang is a junior at the college. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth,

who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the College expects.**

## Sexual Violence – Risk Reduction Tips

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- **DON'T MAKE ASSUMPTIONS** about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you **DO NOT** have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may

have a power advantage simply because of your gender or physical presence. Don't abuse that power.

- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

### **ANTI-RETALIATION POLICY**

The College prohibits retaliation against any person who reports sexual misconduct or participates in the investigation of any allegation of sexual misconduct, including participation as a witness. Any member of the College community or third party who attempts, either directly or indirectly, to intimidate, threaten, retaliate, interfere with, restrain, coerce, discriminate against, violate a College No Contact Order, or harass any person for reporting, attempting to report, or responsibly pursuing a complaint will be subject to prompt and appropriate disciplinary action, including possible termination or expulsion from the College.

Retaliation should be reported promptly to the College's Title IX Coordinator. Reports of retaliation will be investigated in accordance with the appropriate College policy, and such conduct may result in disciplinary action independent of the sanction(s) or interim measures imposed in response to the underlying allegations of sexual misconduct.

### **RESOURCES FOR VICTIMS OF SEXUAL MISCONDUCT**

There is a wide range of resources for all students and employees to provide support and guidance in response to any incident of sexual misconduct or prohibited conduct.

#### **Immediate Medical Assistance and Counseling**

If you or someone you know is or may be the victim of any form of sexual misconduct, the College strongly urges you to seek immediate assistance. This is the best way to ensure that the complainant receives appropriate medical care and emotional support.

Assistance is available 24 hours a day, 7 days a week, from:

- Local Police and Emergency Assistance - Call 911
- Local hospitals - Call 911 or Campus Security to obtain contact information
- Safe Horizon Rape and Sexual Assault Hotline - (866) 689-HELP (4357)
- Safe Horizon Domestic Violence Hotline - (800) 621-HOPE (4673)
- New York State Office of Victim Services Toll Free Number - (800) 247-8035

Off-Campus -- 24/7 Confidential Hotlines:

- RAPE Crisis Hotline 914-345-9111
- Safe Horizon Rape and Sexual Assault Hotline - (866) 689-HELP (4357)
- Safe Horizon Domestic Violence Hotline - (800) 621-HOPE (4673)
- Gay & Lesbian Anti-Violence Project 212-714-1141
- Crime Victim's Hotline 212-577-7777
- New York State Domestic Violence Hotline (800) 942-6906
- New York State Office of Victim Services (800) 247-8035 or [www.ovs.ny.gov](http://www.ovs.ny.gov)

### **Sexual Assault Forensic Examiners**

In instances involving physical injury or sexual assault, the College strongly encourages the complainant to obtain a medical examination to determine the extent of injuries. It is also important to understand that physical evidence collected in a rape examination (i.e., a rape kit) is a way to preserve evidence should anyone want to pursue criminal charges with the police or a local prosecutor at a later time. A hospital, with the complainant's permission, will collect physical evidence in a sexual offense evidence collection kit. Sexual Assault Forensic Examiners (SAFE) are considered the best and most appropriate medical professionals to conduct such an examination. The following local hospitals employ SAFE:

St. Luke's Hospital  
Amsterdam Ave & W 113th St

Roosevelt Hospital  
1000 10th Ave

Beth Israel-Petrie Campus  
1st Ave & E 16th St

Bellevue Hospital  
1st Ave & E 27th St

Harlem Hospital

506 Lenox Ave

Metropolitan Hospital Center  
1901 1st Ave

Mount Sinai Medical Center  
1 Gustave L Levy Pl

New York Presbyterian Hospital-Columbia  
622 W 168th St

New York-Presbyterian Hospital- The Allen Pavilion  
5141 Broadway  
New York-Presbyterian Hospital-Weill Cornell  
525 East 68th Street

## **CONFIDENTIALITY, PRIVACY AND REPORTING POLICY**

All College employees (faculty, staff, administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at College:

### **Confidential Reporting**

If a reporting individual would like the details of an incident to be kept confidential, the reporting individual may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- Dean of Student Affairs
- Off-campus:
  - Licensed professional counselors

- Local rape crisis counselors
- Domestic violence resources,
- Local or state assistance agencies,
- Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit annual anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, patient or parishioner.

### **Formal Reporting Options**

All College employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting individuals may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees. Remedial actions may result without formal College action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party individual has the right, and can expect, to have reports taken seriously by the College when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporting individual, and only a small group of officials who need to know will be told, including but not limited to: [Office for Institutional Equity, Division of Student Affairs, Integrity and Compliance Office, College Police, and the Behavioral Intervention Team]. Information will be shared as necessary

with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

Even College offices and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

**Title IX Coordinator**

Shirley Erves

Room 112

Phone # 212.594.4000 ext. 5264

[serves@tcicollege.edu](mailto:serves@tcicollege.edu)

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of College policy and can be subject to disciplinary action for failure to comply with College policies.

**Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

## **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

## **Public Awareness Events**

The College will not begin an investigation based on information that a person chooses to share during public awareness events that are designed and intended to be safe spaces for complainants to share experiences. These events could include candlelight vigils, "Take Back the Night," protests, or other public events. The College may decide, however, to use the information learned at such an event to inform its efforts for additional education and prevention efforts.

## **Law Enforcement Notification**

If you are the victim of sexual misconduct, the College strongly encourages you to promptly report the incident to the police. Contacting law enforcement will ensure the preservation of evidence and facilitate a timely investigation and response. College representatives are available to assist you in notifying law enforcement of an incident of sexual misconduct and in contacting law enforcement or legal service organizations to learn about these remedies. Except in instances where the victim is under the age of 18, the College will respect a victim's decision regarding whether or not to report an incident to local law enforcement. Where an incident involves the suspected abuse of a minor, certain individuals at the College may have an obligation to report to law enforcement under New York State Law.

**A person may report an incident to either the police or the College or to both simultaneously.** The College's complaint resolution procedures and the criminal justice system work independently from one another and law enforcement officials do not determine whether a violation of this Policy has occurred.

## **Effect of Criminal Proceedings**

Sexual misconduct may constitute a violation of both state law and College policy. The College's definition of sexual misconduct, its process, and its standard of proof for a finding of responsibility for sexual misconduct differ from the standards for finding a violation of criminal law. Therefore, criminal investigations or reports are not determinative of whether sexual misconduct under this Policy has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute. Additionally, a law enforcement determination of whether or not to prosecute a respondent is not determinative of whether the College will conduct an investigation under Title IX.

The filing of a complaint of sexual misconduct under this Policy is independent of any criminal investigation or proceeding. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. The College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the complainant and the College community. However, the College may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code.

## **College Notification**

An individual who feels that he or she has been the victim of sexual misconduct may go directly to the Title IX Coordinator or Deputy Title IX Coordinators to make a report of an incident.

An individual making a report will have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault. These personnel shall be available upon the first instance of disclosure to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible.

When the College receives a report from a student that he or she has been the victim of sexual misconduct, including dating violence, domestic violence, sexual assault or stalking, whether the offense occurred on or off campus, the College will provide the reporting individual with a written explanation of his or her rights and options. The College will provide the reporting individual with written notification regarding existing

counseling, health, mental health, victim advocacy, legal assistance, student financial aid and other services available for victims both within the College and in the community. If the reporting individual is not the complainant, and the identity of the complainant is made known to the College, the College will provide such written notification to the complainant.

### **Amnesty for Victims and Witnesses**

The health and safety of every student at the College is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to College officials. A bystander acting in good faith or reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to discipline for violations of the College's alcohol and/or drug use policies occurring at or near the time of the domestic violence, dating violence, stalking or sexual assault.

### **PROTECTIVE AND REMEDIAL MEASURES**

Remedial and protective measures are available regardless of whether a complainant pursues a complaint or investigation under this Policy. When the College receives a report of alleged sexual misconduct, the College will take immediate steps to protect the complainant, other affected parties, and the College community.

#### **Interim Measures**

Any individual who has been the victim of sexual misconduct may request assistance in changing academic, living, transportation, and working situations, as applicable. These interim measures may also include issuance of a No Contact Order, changes in academic, extracurricular, housing, dining, employment, transportation, or other applicable arrangements.

Requests for accommodations in connection with incidents of sexual misconduct should be made in writing to the College's Title IX Coordinator. The College will grant such accommodations, provided they are reasonable and available, regardless of whether the complainant chooses to report the crime to law enforcement. When taking such

interim measures and/or steps to separate the complainant and the respondent, the College will, to the extent practical, minimize the burden on the complainant. The College will provide information about the request for accommodations only to those having a need to know such information in order to implement the accommodations. The respondent and/or the complainant will, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim measure, including potential modification. The respondent and/or complainant will be allowed to submit evidence in support of his or her request. Violation(s) of the Title IX Coordinator's directives and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

### **No Contact Order**

The College may impose a No Contact Order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing. If the complainant and respondent observe each other in a public place, it shall be the responsibility of the respondent to leave the area immediately and without directly contacting the complainant. In the event the College imposes a No Contact Order, the respondent and/or complainant may request a review of the need for and terms of the No Contact Order, including potential modification, and may submit evidence in support of his or her request. The College will conduct a prompt review in response to such request. An individual who wishes to report a violation of a No Contact Order can contact the Title IX Coordinator.

### **Order of Protection**

A student-complainant also has the right to request the assistance of the College in obtaining an order of protection from either the Family or Criminal Court. If an order of protection is granted, the parties will have the right to receive a copy of the order of protection when the order is received by the College. The parties will also have the opportunity to meet or speak with an appropriate College employee who can explain the order and the consequences for violating the order, and answer any questions about the order. Additionally, if the order of protection is violated, the student-complainant may receive assistance from the College in calling local law enforcement to inform them of the violation.

## **Interim Suspension**

In the event the respondent is determined to present a continuing threat to the health and safety of the community, the respondent may be subject to an interim suspension pending the final outcome of the conduct process. Both parties, upon request, will be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of such request. Again, when taking such interim measures and/or steps to separate the complainant and the respondent, the College will, to the extent practical, minimize the burden on the complainant.

## **RECORDS OF REPORTS AND INVESTIGATIONS**

Personal information about any witness and records regarding these matters will remain confidential insofar as it does not interfere with the College's right to investigate allegations of misconduct and take corrective action where appropriate and practicable. Written records will be retained with regard to the complaint, the investigation and fact-finding, and the resolution. However, the College will comply with criminal legal subpoenas or other civil court-ordered requests for information or paperwork in compliance with FERPA and other laws.

In all cases, all information and other appropriate records will be maintained for a minimum of six (6) years from the outcome of an investigation.

## **APPLICABLE PROCEDURES UNDER THIS POLICY**

Reporting individuals have the right to request that student conduct charges be filed against the accused in proceedings governed by this Policy. The College applies the preponderance of the evidence ("more likely than not") standard when determining whether this Policy has been violated. Where a student is accused of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate this Policy, the student shall be entitled to:

- (i) notice describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions;
- (ii) an opportunity to offer evidence during an investigation, and to present evidence and testimony at a hearing, where appropriate, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five

years from such a hearing and may include a transcript, recording or other appropriate record; and

**(iii)** access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest. In order to effectuate an appeal, a respondent and reporting individual in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a reporting individual must be similarly provided to a respondent and any rights provided to a respondent must be similarly provided to a reporting individual.

Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate this Policy, the following rights shall also exist:

- i.** For the respondent, accused, and reporting individual to be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process.
- ii.** To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made pursuant to the provisions of this article and the institution's policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault.
- iii.** To an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest.
- iv.** To have the institution's judicial or conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

**v.** To review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the conduct case, consistent with institution policies and procedures.

**vi.** To exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the institution disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.

**vii.** To receive written or electronic notice, provided in advance pursuant to the Policy and reasonable under the circumstances, of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.

**viii.** To make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

**ix.** To simultaneous (among the parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.

**x.** To be informed of the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process and the rationale for the actual sanction imposed.

**xi.** To choose whether to disclose or discuss the outcome of a conduct or judicial process.

**xii.** To have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

### **TRANSCRIPT NOTATION**

In accordance with New York State Education Law, Article 129-B, Section 6444 (B)(6), for crimes of violence, including, but not limited to sexual violence, defined as crimes

that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. § 1092(f)(1)(F)(I)-(VIII), the College shall make a notation on the transcript of students found responsible after the completion of the conduct process. Students found responsible of committing a crime meeting the reporting requirements of 20 U.S.C. § 1092(f)(1)(F)(I) -(VIII) shall have noted on their transcript that they were:

- "*suspended after a finding of responsibility for a code of conduct violation*"; or
- "*expelled after a finding of responsibility for a code of conduct violation*".

Students who withdraw from the College while such conduct charges are pending and decline to complete the disciplinary process shall have noted on their transcript that they "*withdrew with conduct charges pending*." For more information on the transcript notation policy, please contact the Title IX Coordinator.

### **STUDENTS' BILL OF RIGHTS**

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the investigation and hearing process and/or criminal justice process free from pressure from the College;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the College courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the College, any student, the accused and/or respondent, and/or their friends, family and acquaintances within the jurisdiction of the College;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and

11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice or judicial or conduct process of the College.