

**STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION**

**PROCEDURE**

**PROCEDURE NUMBER:** 3-2-106.2

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**TITLE:** **STUDENT CODE PROCEDURES FOR ADDRESSING ALLEGED ACTS OF SEXUAL VIOLENCE AND SEXUAL HARASSMENT**

**POLICY REFERENCE NUMBER:** 3-2-106

**DIVISION OF RESPONSIBILITY:** **ACADEMIC AFFAIRS**

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**DATE OF LAST REVISION:** August 4, 2015

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I. Procedural Overview

*The South Carolina Technical College System does not discriminate on the basis of race, color, gender, national or ethnic origin, age, religion, disability, marital status, veteran status, sexual orientation, gender identity, or pregnancy in educational programs and activities as required by Title IX. Any questions regarding Title IX may be referred to the college's Title IX Coordinator or to the Office of Civil Rights.*

The Student Code for the South Carolina Technical College System sets forth the rights and responsibilities of the individual student, identifies behaviors that are not consistent with the values of college communities, and describes the procedures that will be followed to adjudicate cases of alleged misconduct. This Code applies to behavior or complaints alleging acts of sexual violence or sexual harassment on college property, at college-sponsored activities and events, and to off-campus behavior that adversely affects the college and/or the college community and the Code applies to all students from the time of applying for admission through the awarding of a degree, diploma, or certificate.

Any student, or other member of the college community, who believes that he/she is or has been a victim of sexual harassment or sexual violence may file a report with the college's Chief Student Services Officer, campus law enforcement, or with the college's Title IX Coordinator, or designee. The Title IX Coordinator's office location, email address, and phone number are printed in the college's catalog and appear on the college's website. Students may also contact any Responsible Employee, who has an obligation to report any claim of sexual harassment or

sexual assault to the Title IX Coordinator, or designee. The college will evaluate violations to their anti-bullying policy to determine if there is also a possible violation of Title IX.

The Title IX Coordinator, or designee will work with the student who filed a complaint (“Complainant”) under this policy to mitigate, to the extent reasonably possible, the likelihood of additional injury during the pendency of the investigation and proceedings. After a complaint has been filed alleging a sex offense covered under this regulation that has occurred, the Title IX Coordinator, or designee will also accommodate Complainants’ reasonable requests to change academic schedules, housing assignments, or to make other reasonable accommodations.

Reports may also be filed by any other member of the college community at any time. The Complainant may also file a criminal report regarding the alleged conduct. Title IX investigations are separate from criminal investigations. However, colleges may need to temporarily delay the fact-finding portion of a Title IX investigation while law enforcement gathers evidence. During this delay, colleges will take interim measures to protect the complainant in the educational setting. Additionally, all parties involved will receive updates of the status of the investigation and receive notification once the college resumes its Title IX investigation. The State Board for Technical and Comprehensive Education (SBTCE) and its member colleges encourage the prompt reporting of sexual misconduct to campus law enforcement and local law enforcement. Information regarding law enforcement reporting procedures is available on the colleges’ websites.

Due to the seriousness of these issues, the college will provide educational programs to promote the prevention and awareness of rape, acquaintance rape, sexual violence, and other forcible and non-forcible sex offenses, as well as sexual harassment awareness programs.

If the alleged violator named in the report is an employee or third party, the case will be adjudicated through SBTCE Student Grievance Procedure (SBTCE Procedure 3-2-106.3) and/or SBTCE Non-Discrimination, Anti-Harassment, and Sexual Misconduct Procedure (SBTCE 8-5-101.1).

If the alleged violator of this policy is a student, the case may be adjudicated through the Formal Resolution Process (Section IV) or the Informal Resolution Process/Mediation (Section V) as outlined in SBTCE Student Grievance Procedure (SBTCE Procedure 3-2-106.3).

## II. Definitions

When used in this document, unless the context requires other meaning,

- A. A Complainant is an individual alleging conduct prohibited under this regulation.
- B. Conduct is considered “Unwelcome Conduct” if it is unrequested, uninvited, undesirable and/or offensive. Unwelcome conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Unwelcome conduct does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Participation in the conduct or the failure to complain does not always mean that the conduct was welcome. The fact that a student may have welcomed some conduct does

not necessarily mean that a student welcomed other conduct. Also, the fact that a student requested or invited conduct on one occasion does not mean that the conduct is welcome on a subsequent occasion.

- C. Consent is explicit approval and permission to engage in sexual activity demonstrated by clear action, words, or writings. Consent must be informed, voluntary, and mutual, and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to engage in sexual activity with another person does not imply ongoing future consent with that person or consent to engage in that same sexual activity with another person. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.
- D. A Hostile Environment exists when sex-based harassment is sufficiently serious to deny or limit the student's ability to participate in or benefit from the college's programs or activities. A hostile environment can be created by anyone involved in a college's program or activity (e.g., administrators, faculty members, students, and campus visitors).
- E. Gender-Based Harassment is unwelcome conduct of a nonsexual nature based on a student's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes.
- F. Preponderance of Evidence is the standard used to evaluate the evidence for purposes of making findings and drawing conclusions for an investigation conducted under this regulation.
- G. A Respondent is an individual accused of a violation under this regulation.
- H. A Responsible Employee is any employee who has the authority to take action to redress sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee; or who a student could reasonably believe has this authority or duty.
- I. Retaliation is action taken by an accused individual or an action taken by a third party against any person that has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.
- J. Sex-Based Harassment includes sexual harassment and gender-based harassment.
- K. Sexual Assault is actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to: intentional touching of another person's intimate parts without that person's consent; or other intentional sexual

- contact with another person without that person's consent; or coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.
- L. Sexual Exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent. Examples of behavior that could rise to the level of sexual exploitation include: Prostituting another person; recording images (e.g., video, photograph, or audio) of another person's sexual activity, intimate body parts, or nakedness without that person's consent; distributing images (e.g., video, photograph, or audio) of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.
  - M. Sexual Harassment is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favors; or other verbal or nonverbal conduct of a sexual nature, including rape, sexual violence, sexual assault, and sexual exploitation. In addition, depending on the facts, dating violence, domestic violence, and stalking may be may also be forms of sexual harassment.
  - N. Sexual Violence is a broader term than sexual assault. The term encompasses sexual homicide, rape, incest, molestation, fondling, stalking, intimate partner violence, and verbal harassment of a sexual nature. Sexual violence includes creating an environment that feels unsafe based on sexual messages or images. Sexual violence is a sexual act that is completed or attempted against a victim's will or when a victim is unable to consent due to age, illness, disability, or the influence of alcohol or other drugs. The act may involve actual or threatened physical force, use of weapons, coercion, intimidation or pressure.
  - O. Stalking includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device, or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death to the targeted person or a member of their family.

### III. Sanctions

Following an investigation by the Title IX Coordinator, or designee, and/or hearing before the Hearing Committee the following sanctions may be imposed, if the available information indicates that a violation has occurred:

- A. Reprimand--A written warning documenting that the student violated a student conduct regulation and indicating that subsequent violations could result in more serious disciplinary sanctions.

- B. Special Conditions—Completion of a variety of educational activities, relating to the nature of the offense may be imposed. Examples include, but are not limited to, the following: a formal apology, an essay or paper on a designated topic, or participation in a special project or activity.
- C. Disciplinary Probation--A written reprimand documenting that the student violated a student conduct regulation. Probation is for a specified period of time and it serves as a warning that subsequent violations could most likely result in more serious disciplinary sanctions.
- D. Loss of Privileges-- Suspension or termination of particular student privileges.
- E. Suspension from the college--Separation from the college for a specified period of time. Suspended students will not receive academic credit for the semester in which the suspension was imposed. During the suspension period, the student may not return to the campus unless prior permission by the Chief Student Services Officer, or designee, has been granted.
- F. Expulsion from the college--Permanent separation from the college. An expelled student may not return to the campus unless prior permission by the Chief Student Services Officer, or designee, has been granted. An expelled student will not receive academic credit for the semester in which the expulsion was imposed.
- G. Additional Measures – Minimizing contact between Complainant and Respondent; may include, but is not limited to: change in academic and extracurricular activities, living arrangements, transportation, dining, and college-related work assignments, as appropriate.
- H. Any combination of the above.

#### IV. Formal Resolution Process

##### A. Preliminary Investigation

Within five (5) instructional weekdays after the charge has been filed, the Title IX Coordinator, or designee, shall complete a preliminary investigation of the charge and schedule a meeting with the alleged violator (Respondent) and, if needed, the Complainant. During the pendency of the investigation, the college will take reasonable measures to ensure the requirements of any judicial no-contact, restraining, or protective orders are followed while the Complainant is engaged in school activities. After discussing the alleged infraction with the Respondent and reviewing available information, the Title IX Coordinator, or designee will decide whether the information presented during the meeting indicates that a violation occurred. When the Respondent cannot be reached to schedule an appointment or when the Complainant fails to attend the meeting, the Title IX Coordinator, or designee, will base the decision upon the available information.

##### B. Sanctioning

If the available information indicates that a violation has occurred, then one of the following sanctions outlined in Section III will be imposed.

C. Notification of Resolution

Within five (5) instructional weekdays of completion of the preliminary investigation, the Title IX Coordinator, or designee, will send a certified letter to the Respondent and to the Complainant. This letter will confirm the date of the preliminary hearing, identify the specific regulation(s) that the Respondent allegedly violated, identify the decision, summarize the rationale, and, if the Respondent violated the regulation(s), state the sanction that was imposed. This letter must also state that if the Respondent or the Complainant disagrees with the decision or the sanction, either party may request a hearing before the Hearing Committee, that the request must be submitted no later than two (2) instructional weekdays after receiving the decision letter unless a request is made and approved by the Title IX Coordinator, or designee, for an extension, and that any decision made and sanction imposed after the preliminary investigation may be held in abeyance pending the outcome of the Hearing Committee's meeting. Under exceptional circumstances, the Title IX coordinator, or designee may extend the timeframe of the investigation and hearing process.

D. Hearing

If it is determined by the Title IX Coordinator, or designee, that the alleged violation occurred and that a hearing is necessary or if a hearing is requested, the Title IX Coordinator, or designee, shall refer the matter to the Hearing Committee together with a report of the nature of the alleged misconduct, the name of the person(s) filing the complaint(s), the name of the student against whom the charge(s) has (have) been filed, and a summary of the findings from the preliminary investigation. The Title IX coordinator, or designee, will also take steps, where necessary, to prevent the further harassment of or retaliation against the Complainant, the victim (if not the Complainant), or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing trainings for the school community, and providing sexual harassment or sexual assault or other counseling to the Complainant. The Title IX Coordinator, or designee, where appropriate, will ensure the Complainant is aware of available resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. The Title IX Coordinator, or designee, where appropriate, will also take steps to prevent the harassment of the Respondent. Furthermore, the Title IX Coordinator, or designee will take prompt corrective action if the Complainant or the victim (if not the Complainant) experiences retaliation or is subjected to further sexual harassment or sexual assault or if the original sanctions imposed on the Respondent are ineffective to protect the safety and well-being of the Complainant, the victim (if not the Complainant), or other members of the Technical College community. In cases involving sexual harassment, the Title IX Coordinator, or designee, will also take reasonable steps to eliminate any hostile environment that has been created, such as conducting trainings and disseminating informational materials. In taking the above-outlined steps, the Title IX Coordinator, or designee, will make every reasonable effort to minimize the burden on the Complainant and/or alleged victim.

1. At least seven (7) instructional weekdays before the date set for the Hearing Committee's meeting, the Title IX Coordinator, or designee, shall send a certified letter to the Respondent's address of record and to the Complainant's address of record. The letter must contain the following information:

- a) A statement of the charge(s).
  - b) A brief description of the incident that led to the charge (s).
  - c) The name of the person(s) submitting the incident report.
  - d) The date, time, and place of the scheduled hearing.
  - e) Identification of the members and chair of the Hearing Committee
  - f) A list of all witnesses who might be called to testify.
  - g) A statement of each party's procedural rights. These rights follow:
    - 1) The right to consult counsel. This role of the person acting as counsel is solely to advise the student. Counsel may not address the Hearing Committee or participate in any of the questioning. The student has the responsibility for paying any of the counsel's fees and any other of the counsel's charges.
    - 2) The right to present witnesses on one's behalf.
    - 3) The right to know the names of any witnesses who may be called to testify at the hearing.
    - 4) The right to review all available evidence, documents, exhibits, etc., that may be presented at the hearing.
    - 5) The right to present evidence; however, the Hearing Committee will determine what evidence is admissible.
    - 6) The right to know the identity of the person(s) bringing the charge(s).
    - 7) The right to hear witnesses on behalf of the person bringing the charges.
    - 8) The right to testify or to refuse to testify without such refusal being detrimental to the student.
    - 9) The right to challenge the participation of any member of the Hearing Panel by submitting a written objection to the assigned Title IX Coordinator within three (3) days of notification. Such an objection must state the specific reason(s) for the objection. The Title IX Coordinator will evaluate the objection and determine whether to alter the composition. Any changes in the composition of the Hearing Panel will be provided in writing to both parties prior to the date of the first hearing.
    - 10) The right to a fair and impartial decision.
    - 11) The right to appeal the Hearing Committee's decision.
2. On written request of the Respondent or the Complainant, the hearing may be held prior to the expiration of the seven (7) day advance notification period if the Title IX Coordinator, or designee, concurs with this change.
  3. The chairperson of the Hearing Committee, in his/her discretion, may postpone the hearing due to circumstances beyond the control of the parties.

#### E. Appeal

If either student disagrees with the decision or, only in the cases involving charges of sexual violence, the sanction, the student may submit a written appeal to the college's President. This letter must be submitted within ten (10) instructional weekdays of the date on which the Hearing Committee communicated its decision to the parties involved. The written appeal must include a statement indicating why the student disagrees with the Hearing Committee's findings.

The President, or designee, shall review the Hearing Committee's findings, conduct whatever additional inquires as deemed necessary, and render a decision within ten (10)

instructional weekdays of receiving the appeal. The President, whose decision is final, shall have the authority to approve, modify, or overturn the Hearing Committee's decisions and, if needed, void the process and reconvene another Hearing Committee.

The President, or designee, will inform each student about the outcome of the appeal in a certified letter sent to the student's address of record.

#### V. Informal Resolution/Mediation Process

At any time before the Hearing Committee provides notice of the Complainant's hearing, the Complainant may elect to resolve his or her Complaint through the informal resolution (mediation) process, provided that (1) the Respondent agrees to such resolution, (2) the Complainant and the Respondent are both students, (3) the Title IX Coordinator, or designee, determines that informal resolution is an appropriate mechanism for resolving the Complaint, and (4) the Complaint does not involve sexual assault, sexual exploitation, and sexual violence. Otherwise, a Complaint that is not closed pursuant to the Title IX Coordinator's, or designee's, evaluation of the Investigative Report will proceed to formal resolution.

At any time prior to the date of his or her designated hearing, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged sexual harassment or sexual assault, sexual exploitation, and sexual violence. In such a situation, the Title IX Coordinator will propose sanction(s). If the Complainant or the Respondent objects to such proposed sanction(s), then a Hearing Committee will convene for the exclusive purpose of determining a sanction, which determination may be subject to appeal.

Informal resolution may not be selected for less than all of the misconduct alleged in the Complaint. If the parties agree to informal resolution (and informal resolution is appropriate for all the claims at issue), then all of the claims must be resolved according to the informal resolution process.

The Complainant and Respondent both have the right to terminate the informal resolution process at any time and proceed with formal resolution. Furthermore, the Title IX Coordinator, or designee, may, where appropriate, terminate or decline to initiate informal resolution, and proceed with formal resolution instead. In such cases, statements or disclosures made by the parties in the course of the informal resolution process may be considered in the subsequent formal resolution proceedings.

- A. The Title IX Coordinator, or designee, will appoint a Mediator to oversee the mediation process.
- B. Notice of the Mediation- Promptly after the Title IX Coordinator, or designee has appointed the Mediator; the Title IX Coordinator, or designee will provide concurrent written notice to the Complainant and the Respondent, setting forth 1.) the date, time, and location of the mediation; 2.) the name of the individual selected to serve as the Mediator.
- C. No Contact- Parties may not contact each other outside of the mediation, even to discuss the mediation.

- D. Attendance- Both the Complainant and the Respondent are expected to attend the mediation. If either party fails to appear at the mediation, and such party was provided proper notice of the mediation as set forth above, the Mediator may either direct that resolution of the Complaint to be determined according to the formal resolution process set forth above, or if the Complainant fails to appear without good cause, dismiss the Complaint.
- E. The Mediation
1. The Complainant's Rights. During the mediation the Complainant may:
    - a) Confront the Respondent in the presence of, and facilitated by, the Mediator
    - b) Communicate his or her feelings and perceptions regarding the incident and the impact of the incident either by communicating directly with the Respondent or by communicating indirectly with the Respondent through the Presiding Officer and/or
    - c) Relay his or her wishes and expectations regarding protection in the future.
  2. Counsel and Advisors
    - a) Legal Counsel- Under no circumstances may legal counsel be present at the mediation on behalf of the alleged Complainant or Respondent. The College, however, may seek advice from legal counsel on questions of law and procedure through the mediation process.
    - b) Other Advisors- Absent accommodation for disability, the parties may not be accompanied by an advisor during the mediation.
  3. Resolution  
During the mediation, the Presiding Officer will attempt to facilitate the parties' resolution of the Complaint. If the mediation results in a resolution between the parties and the Title IX Coordinator, or designee, finds the resolution to be appropriate under the circumstances (giving consideration to the extent to which the resolution will protect the safety of the Complainant and entire college community), the informal disciplinary procedure will be concluded, and the complaint will be closed. If such a resolution is reached, the terms of the resolution shall be committed to writing and signed by all parties. If the parties are unable to reach a resolution, the formal resolution process outlined above will promptly commence.
  4. Revocation  
Any party bound by a resolution reached during mediation shall have the right to revoke the written mediation agreement provided such revocation is in writing and received by the Title IX Coordinator, or designee, no later than the close of business on the fifth day after full execution of the agreement.
- F. Privacy and Disclosure. In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the informal resolution process is not open to the general public. Accordingly, documents prepared in anticipation of the mediation and other information introduced at the mediation may not be disclosed outside of the mediation, except as may be required or authorized by law.

- G. Documentation. The college will retain any documentation of the mediation for at least seven (7) years.

## VI. Hearing Committee

The Hearing Committee shall be composed of the following:

- A. Five (5) faculty/and or staff members and one (1) Ex Officio nonvoting member appointed by the Title IX Coordinator, or designee.
- B. All cases are decided by a majority vote. In extenuating circumstances hearings may move forward with three (3) members.
- C. The Title IX Coordinator, or designee, will designate one (1) member of the Hearing Committee as the Chair.

The Hearing Committee shall perform the following functions:

- A. Hear cases of alleged violations of the Code of Student Conduct.
- B. Insure that the student's procedural rights are met.
- C. Make decisions based only on evidence and information presented at the hearing.
- D. Determine sanctions, giving consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation.
- E. Provide the student with a statement of the committee's decision including findings of fact and, if applicable, impose one or more of the sanctions outlined in Section III.

### Hearing Committee Meetings

- A. The chair shall be appointed by the Title IX Coordinator, or designee, from among the membership of the Committee. Ex officio members of the committee may not serve as the chair of the committee.
- B. Committee hearings shall be closed to all persons except the student, the person(s) initiating the charge(s), counsels for any student and for the college, witnesses who will be invited into the hearing and a person, mutually agreed upon by the Committee and the student(s), to serve as the recorder.
- C. The Committee may identify someone to take written notes and the committee will have the hearing, with the exception of deliberations, recorded. No other party in the hearing may record the proceedings, and no other party is entitled to a copy of the notes or the recording. The written notes and the recording will be maintained in the office of the Title IX Coordinator. The student may review the notes and listen to the recording under the supervision of the Title IX Coordinator or designee.
- D. Witnesses shall be called in one at a time to make a statement and to respond to questions.
- E. After hearing all of the information, the Hearing Committee will go begin its deliberations. Using the "preponderance of evidence" standard, which means that it is more likely than not that the violation, occurred, the members will determine, by majority vote, whether the violation occurred. If it is determined that the violation occurred, by majority vote, the members will decide upon the appropriate sanction.
- F. The Chair of the Hearing Committee will send a certified letter to the Respondent's and to the Complainant's addresses of record within two (2) instructional weekdays of the Committee's decision. The letter shall inform the students about the Committee's decision, the date of the decision, and, if applicable the sanction(s) imposed. The letter will also inform each recipient about the appeal process.

1. When the case results in a finding that the student engaged in an act of sexual violence, the Chair's letter to the Complainant will also include the sanction imposed by the Hearing Committee.
2. When the case results in a finding that the student engaged in an act of non-violent sexual harassment, the Chair's letter to the Complainant will only include the sanction imposed by the Hearing Committee if the sanction directly relates to the Complainant (e.g., the violator has been directed to stay away from the Complainant while on the college's campus).

#### VII. Confidentiality and Privacy

The college will protect Complainants' privacy to the extent possible under the law. In some situations, including those in which disciplinary action is a possible outcome, due process may require disclosure of information to persons accused.

The college will make every reasonable effort to abide by Complainants' wishes to remain anonymous; however, the college will balance requests for anonymity/confidentiality with the safety of other members of the community. Factors that will be considered in determining whether to disclose a complaint or report of misconduct to a respondent include: the seriousness of the alleged conduct; the Complainant's age; whether there have been other complaints about the same individual; and the alleged violator'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 (FERPA). All hearings closed to all persons except those referenced in hearing section (VI, "Hearing Committee Meetings").

#### VIII. Amnesty for Drug and Alcohol Possession and Consumption Violations

Students are encouraged to report instances of sex-based discrimination, sexual harassment, and sexual harassment or sexual assault involving students. Therefore, students who report information about sex-based discrimination, sexual harassment, or sexual harassment or sexual assault involving students will not be disciplined by the college for any violation of the college's drug or alcohol possession or consumption policies in which they might have engaged in connection with the report.