



Title: Student Sexual Misconduct	Policy No.: ADM 9.06	Date: 12/1/14 Rev.: 2/20/2017, 8/1/2017, 5/9/2017, 8/1/2018
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Areas Affected: All BSMCON

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**I. Purpose:**

To address behavior that may violate Title IX of the Education Amendments of 1972; provisions of the Violence against Women Reauthorization Act of 2013; and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. This policy also outlines the procedures established to address and report complaints of sexual misconduct and sex- and gender-based discrimination by students toward students, employees, or non-employees.

**II. Policy Statement:**

Bon Secours Memorial College of Nursing (the “College”) is committed to a working and learning environment free from sexual misconduct. Sexual misconduct is conduct of a sexual nature or conduct based on sex or gender that is nonconsensual or has the effect of threatening, intimidating, or coercing a person. Sexual misconduct may include sexual harassment, sexual assault, intimate partner violence or abuse, sexual exploitation, and sexual intimidation, as well as any form of sex- and gender-based discrimination. Sex- and gender-based discrimination is defined as unfairly treating an individual or group of individuals differently than others on the basis of sex or gender.

All members of the College community have an obligation to act responsibly in the realm of sexuality. Sexual misconduct, including sex- and gender-based discrimination, will not be tolerated. The College is committed to fostering a climate that is free from sexual misconduct through procedures that promote prompt reporting and the timely, fair, and impartial investigation and resolution of sexual misconduct cases. If reported and confirmed, the College will take all appropriate steps to eliminate sexual misconduct, prevent its recurrence, and address its effects.

This Policy describes prohibited conduct, explains what to do if you wish to make a complaint of sexual misconduct, sets forth procedures to be followed for promptly and equitably investigating and resolving such complaints, and identifies available resources.

It is a violation of this Policy to retaliate against any person making a report of sexual misconduct or against any person cooperating in the investigation (including testifying as a witness) of any allegation of sexual misconduct. Retaliation includes intimidation, threats, or harassment against any such reporting party or third party. Retaliation should be reported promptly and may result in

Reference Policy # ADM 9.09

<b>Approved by:</b>		
_____	<u>Dean Administration</u>	_____
_____	<u>Provost/VP</u>	_____
Signature	Title	Date
<b>Approval History:</b>		
Committees and Dates:		
Dean of Administration 12/10/14, 2/20/2017, 4/17, 5/17		
Policy Committee 2/20/2017, 4/17/2017, 5/15/2017, 7/30/2018E		
Key words: Sexual conduct		

disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of sexual misconduct.

### III. Applicability:

A. This policy is applicable to students on campus and students attending any activities that are sponsored, initiated, authorized, or supervised by the College.

B. This policy is applicable to any student, employee, or non-employee who believes he/she is the victim of sexual misconduct by a student.

C. As long as the College has jurisdiction over the reported student, there is no time limit to invoke this Policy in cases of alleged sexual misconduct. Nevertheless, persons are encouraged to report alleged sexual misconduct as soon as possible in order to maximize the College's ability to respond promptly and effectively.

D. Any student, employee, or non-employee who believes he/she is the victim of sexual misconduct by a college or BSHSI employee should follow the procedures as laid out in this policy and BSV Policy SYS.HR.EMP.047.

E. Any member of the college community making an intentionally false accusation of sexual misconduct shall be subject to the provisions of this policy and BSV Policy SYS.HR.EMP.047.

F. All matters will be handled in compliance with BSMCON Policy ADM 3.01 the Family Educational Rights and Privacy Act (FERPA) and in accordance with guidance provided by the Department of Education's Office of Civil Rights.

### IV. Definitions of Prohibited Conduct:

The prohibited conduct addressed in this policy applies to all students regardless of the sex, sexual orientation or gender identity of the complainant or respondent.

Sexual misconduct is a broad term encompassing any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation, coercion, or manipulation. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by men or by women, and it can occur between people of the same or different sex.

Sexual misconduct includes, but is not limited to, the following examples of prohibited conduct as defined in this Policy:

Sex- and Gender-Based Discrimination is unfairly treating an individual or group of individuals differently than others on the basis of sex or gender. Sex and gender based discrimination may include sexual misconduct as well as other discriminatory behaviors that do not constitute sexual misconduct. Examples of prohibited conduct that can represent discrimination based on sex, sexual orientation or gender identity include but are not limited to:

- Targeting an individual based on their sex or gender identity for negative and/or harmful treatment;

- Not allowing an individual to participate in a College activity based on sex or gender identity;
- Harassing a student based on their sex or gender identity leading to an interference with the student's educational experience.

Sexual Harassment is unwelcome conduct, based on sex or on gender stereotypes, which is so severe or pervasive that it unreasonably interferes with a person's employment, academic performance or participation in College programs or activities and creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive. Sexual Harassment may include, but is not limited to, unwelcome sexual advances, requests for sexual favors, or acts of sexual violence.

In evaluating a complaint of Sexual Harassment, the perceived offensiveness of a particular expression, standing alone, may not be sufficient by itself to constitute Sexual Harassment. The conduct in question must be objectively intimidating, hostile or offensive and interfere with a person's right to equally participate in programs and activities of the College.

Sexual Exploitation means taking sexual advantage of another person without Effective Consent, and includes, without limitation, causing or attempting to cause the Incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.

Sexual Assault is a form of sexual misconduct and represents a continuum of conduct from forcible intercourse to nonphysical forms of pressure that compel individuals to engage in sexual activity against their will. Examples of sexual assault under this policy include, but are not limited to:

- sexual intercourse (anal, oral, or vaginal). Intercourse, however slight, meaning vaginal penetration by a penis, object, tongue, or finger; anal penetration by a penis, object, tongue, or finger; or oral copulation (mouth to genital contact or genital to mouth contact);
- attempted sexual intercourse (anal, oral, or vaginal);
- intentional contact with the breasts, buttocks, 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;
- any other intentional unwanted bodily contact of a sexual nature;
- use of coercion, manipulation, or force to make someone else engage in sexual touching, including breasts, chest, and buttocks.

Non-Consensual Sexual Contact is Sexual Contact that occurs without Effective Consent.

Non-Consensual Sexual Intercourse is Sexual Intercourse that occurs without Effective Consent.

Sexual Intimidation involves threatening another person that you will commit a sex act against them or engaging in indecent exposure.

Intimate Partner Violence or Abuse is physical violence, sexual violence, stalking and psychological aggression (including coercive acts) by a current or former intimate partner.

#### V. Reporting Incidents:

The College encourages students to report sexual assault promptly to local law enforcement agencies. The College also urges any person with knowledge of an incident of prohibited conduct to report the incident immediately to the College through contacting the College's Title IX Coordinator or any administrator by email, telephone, or during regular office hours. All college administrators are required by law to file an official report.

Leslie Winston - Dean of Student Services and Title IX Coordinator

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#### VI. Reporting Procedures:

Prompt reporting is encouraged. Persons may report allegations of sexual misconduct at any time, but are encouraged to make reports promptly in order to maximize the College's ability to obtain evidence and conduct a prompt, fair, and impartial investigation. Failure to report promptly any alleged sexual misconduct may result in a loss of relevant evidence and witness testimony and may impair the College's ability to respond and take appropriate action.

In accordance with the Clery Act, sexual assault is a crime that will, with the complainant's consent, be reported to the police. Sexual assault is never the victim's fault. Every attempt will be made to keep the student free from any suggestion that he/she is responsible or was "contributory negligent" or assumed the risk of being a victim of sexual assault. Victims of sexual assault are strongly encouraged to seek immediate medical attention at an area hospital or medical clinic. If the victim wishes, he/she will be assisted in seeking prompt medical attention.

If at all possible, the victim should not change clothes, shower, bathe, douche, or urinate. Emergency room personnel are trained to check for injuries, as well as collect physical evidence. It is important to preserve evidence as it may be necessary for the proof of criminal sexual misconduct should you decide to pursue charges through the Police Department or other relevant law enforcement authority.

Hospital personnel are obligated to contact proper authorities regarding the assault. Although not obligated to do so, victims of sexual misconduct are highly encouraged to take advantage of victim's services to help them understand their options for off-campus proceedings and to receive counseling specific to their needs.

The College will do everything possible to provide a climate that is sensitive to and respectful and supportive of individual needs. The student will have access to existing campus counseling and support services and, when appropriate, adjustments will be made to academic schedules, etc.

All reports of sexual misconduct will be taken seriously and investigated promptly. The College strives to investigate and resolve all complaints without delay. Actual resolution time may vary

depending on the complexity of the investigation and the severity and extent of the alleged misconduct.

The College will make every effort to safeguard the privacy and identities of persons who seek help and/or report sexual misconduct. While steps will be taken to protect the privacy of such persons, the College may need to investigate an incident and take action once an allegation is known, whether or not the person chooses to pursue a complaint. The College adheres to all federal, state, and local requirements for intervention, crime reporting, and privacy provisions relating to sexual misconduct.

Because of the sensitive nature of situations involving sexual misconduct and in order to assure efficient and confidential resolution of these issues while preserving the rights of all affected persons, the College has established the following procedures to address sexual misconduct complaints against students of the college. Any specific time limitations stated in this policy may be extended by mutual agreement or by extenuating circumstances.

#### Intake Meeting with Complainant

Upon receipt of notice of any allegation of sexual misconduct, the Title IX Coordinator will schedule an individual intake meeting with the complainant in order to provide the complainant with a general understanding of this policy and to identify forms of support of immediate interventions available to the complainant. The intake meeting may also involve a discussion of any accommodations that may be appropriate concerning the complainant's academic or College employment arrangements.

#### Complainant Wishes to Pursue Formal or Informal Resolution

At the initial intake meeting with the complainant, the Title IX Coordinator will seek to determine how the complainant wishes to proceed, i.e., whether the complainant wishes to pursue Formal Resolution, Informal Resolution, or does not wish to pursue resolution of any kind. If the complainant wishes to proceed with either Formal or Informal Resolution, the Title IX Coordinator will determine the name of the accused student and the date, location, and nature of the alleged sexual misconduct and will schedule an individual intake meeting with the accused student in order to provide to the accused student a general understanding of the policy and to identify forms of support or immediate interventions available to the accused student. The College will provide an accused student with a written description of the allegations containing sufficient details about the complaint before conducting the initial interview, including the identities of the parties involved, the specific section of the code of conduct allegedly violated, the conduct constituting the potential violation, and the date/location of the alleged incident.

If the complainant wishes to proceed with Formal Resolution, the Title IX Coordinator will promptly prepare and forward a formal complaint to the Investigators for investigation, in accordance with the provisions below. The formal complaint will set forth the name of the accused student and the date, location, and nature of the alleged sexual misconduct or sex/gender discrimination, and should be signed by the complainant.

If the complainant wishes to proceed with Informal Resolution, the Title IX Coordinator will initiate the Informal Resolution proceedings in accordance with the provisions below.

## Complainant Does Not Wish to Pursue Formal or Informal Resolution or Requests Confidentiality

If the complainant does not wish to pursue formal or informal resolution and/or requests that his or her complaint remain confidential, Title IX nevertheless requires the College to investigate and take reasonable action in response to the complainant's information. The Title IX Coordinator will inform the complainant, however, that the College's ability to respond may be limited. The Title IX Coordinator should inform the complainant if the College cannot ensure anonymity. The Title IX Coordinator reserves the authority to undertake an appropriate inquiry and take other reasonably necessary measures, including the interim measures described below.

### Interim Measures

In all complaints of sexual misconduct and sex/gender discrimination, regardless of whether the complainant wishes to pursue Formal Resolution, Informal Resolution, or no resolution of any kind, the College will undertake an appropriate inquiry and take such prompt and effective action as is reasonably practicable under the circumstances to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any. Accordingly, at or after the intake meeting, after considering the relevant facts and circumstances, the Title IX Coordinator may impose a "no-contact" order, which typically will include a directive that the parties refrain from having contact with each other, directly or through proxies, whether in person or via electronic means, pending the investigation and, if possible, the hearing. The Title IX coordinator may also take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, if any. When taking steps to separate the complainant and the accused student, the Title IX Coordinator will seek to minimize unnecessary or unreasonable burden on either party. Violation(s) of the Title IX Coordinator's directive and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

## VII. Options for Resolution:

### Informal Resolution

A complainant who wishes to file a formal complaint with the Title IX Coordinator's Office but who does not wish to pursue Formal Resolution may request a less formal proceeding, known as Informal Resolution. Informal Resolution provides an opportunity to resolve the problem in a less formal, but still professional and confidential manner. The accused student is required to attend the Informal Resolution proceeding.

When a complainant indicates a desire to pursue Informal Resolution, the Title IX Coordinator will prepare a written complaint, signed by the student, summarizing the alleged sexual misconduct, and provide a copy of the statement to the respondent. The Title IX Coordinator will schedule the Informal Resolution proceeding in a timely manner after the distribution of the statement to the parties.

An Informal Resolution proceeding provides an opportunity for the complainant to address the accused student in the presence of, and facilitated by, a presiding officer. The presiding officer shall be the Title IX Coordinator or his or her designee. The complainant may communicate his or her feelings or perceptions regarding the incident, the impact of the incident, and his or her wishes or

expectations regarding protection in the future. The respondent will be allowed to rebut complainant's allegations (in writing or through testimony) and provide any information relative to the complaint.

Both the complainant and the respondent may bring an advisor to the Informal Resolution proceeding. Advisors may advise the party but not participate in any part of the process.

After the proceeding, the Title IX Coordinator or designee will timely conduct any further investigations of the complaint that are necessary in order to render a decision, which will be limited to one of the following:

The complaint is dismissed due to lack of information and/or inability to determine if an act(s) of sexual misconduct was committed.

The complaint is dismissed based on the conclusion that the behavior/acts in question do not constitute sexual misconduct.

The accused individual is responsible for some degree of sexual misconduct and a letter, warning, reprimand, or sanction is to be issued by the Title IX Coordinator or designee.

The Title IX Coordinator or designee will then notify the complainant and respondent of the outcome in writing. If the parties are satisfied with the outcome, documentation of the outcome of the informal procedure will be filed in the Office of Student Services and no further action will be taken. If the parties are not satisfied with the outcome, the Title IX Coordinator or designee will advise the complainant and the respondent of his/her options, including Formal Resolution.

In order to promote honest, direct communication, information disclosed during an Informal Resolution proceeding must remain private while the Informal Resolution is pending, except where disclosure may be required by law or authorized in connection with duties on behalf of the College.

#### Formal Resolution

A Formal Resolution involves a formal hearing before a review panel appointed by the Title IX Coordinator. When a complainant indicates a desire to pursue Formal Resolution, the Title IX Coordinator will prepare and forward the complaint to the Provost's Office for an investigation by such person or persons (the "Investigators") designated by the Title IX Coordinator and/or Provost. The Investigators are neutral fact-finders who typically conduct interviews with the complainant, the accused student, and third party witnesses. The Investigators will produce an Investigative Report that includes summaries of interviews with the complainant, the accused student, and any third party witness; any photographic, electronic, or forensic evidence; a detailed written analysis of the events in question; and a determination of whether there is good cause to grant a hearing. The Investigative Report will be distributed, concurrently, to the complainant, the respondent, and to the Title IX Coordinator. Both the complainant and the respondent shall have an opportunity to respond to the written Investigative Report at the Hearing, either with live testimony or via a written submission.

If the Investigators determine that a hearing should be held, a Notice of Hearing promptly will be delivered, concurrently, to both parties by the Title IX Coordinator. The Notice should state which

alleged violations of this Policy and any other related misconduct should go forward for a hearing, and specify the time, date, and place the Hearing will be held. Every attempt should be made to schedule the Hearing within fifteen (15) business days of the Notice of Hearing.

If the Investigators determine no good cause exists to grant a hearing, the matter is concluded. Either party may appeal the good cause determination to the Provost, whose decision on the matter will be final.

Within five (5) business days of the date the Notice of Hearing was issued, or as soon as practicable, the Title IX Coordinator shall appoint a Hearing Panel consisting of three members: one faculty member, one administrative staff member, and one student. To ensure an impartial panel, no member may have had prior involvement in the complaint process or have direct or indirect supervisory or teaching responsibility for either party. The parties will be provided the names of persons serving on the Hearing Panel, in writing.

Either party may request the removal of a member of the Hearing Panel on the grounds of personal bias by submitting a written objection to the Title IX Coordinator or designee, copying the other party, and specifying the basis of the challenge no later than three (3) business days after the Title IX Coordinator provides the names of the persons serving on the panel. The Title IX Coordinator or designee will determine whether to sustain or deny the challenge. If the request is sustained, a replacement will be appointed to serve on the hearing panel. If the request is denied, the Title IX Coordinator or designee shall so indicate to in writing. The Title IX Coordinator's (or designee's) decision on the request is final.

Within five (5) business days before the Hearing, the Hearing Panel will be provided with a copy of the Investigative Report.

Within five (5) business days before the Hearing, each party will also provide the Title IX Coordinator (for distribution to the panel and the opposing party) a list of witnesses and any written evidence or exhibits the party plans to present. Each party is responsible for securing the presence of its own witnesses at the hearing.

In addition, both the complainant and the respondent shall be

- advised of the right to appear alone or with an advisor who may advise the party but not question witnesses or participate in any part of the hearing;
- allowed to examine, in advance, any written evidence or exhibits that the opposing party plans to submit;
- advised of the right to argue on his/her behalf, present evidence and witnesses, and provide questions for the panel to ask the witnesses present;
- advised of the right to appeal the decision of the panel.

The hearing will be closed to the public. The Title IX Coordinator or designee will serve 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/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 will be observed:

### Order of Presentation

- opening statement of complainant;
- opening statement of respondent;
- presentation of evidence, including witnesses, by the complainant. Hearing Officer will ask the previously submitted written cross-examination questions;
- presentation of evidence, including witnesses, by the respondent. Hearing Officer will ask the previously submitted written cross-examination questions;
- closing statement by respondent;
- closing statement by complainant;
- private deliberation by panel.

Only tangible evidence which all parties have had an opportunity to review in advance will be permitted to be introduced at the hearing.

Each party may question his or her own witnesses, and provide questions to the panel to ask the opposing party's witnesses. To the extent possible, cross-examination questions should be submitted in advance. The Title IX Coordinator may allow time for submission of cross-examination questions at the hearing, in his or her discretion. 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 there will be no opportunities to cross examine the witness making the written or taped statement. Witnesses will be excluded from the hearing room and at the appropriate time brought in individually before the panel.

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.

The panel will recommend to the Title IX Coordinator, or designee, a sanction in accordance with this Policy.

The complainant and respondent will be notified in writing of the panel's decision, reasons for the decision, and any sanction imposed within ten (10) business days of the Hearing, and may be required to meet with the Title IX Coordinator or designee.

The complainant or respondent may appeal the finding of the hearing panel to the Provost. (See below.)

Legal proceedings:

#### A. Sexual Misconduct

Because sexual misconduct may constitute both a violation of College policy and criminal activity, the College encourages students to report alleged sexual misconduct promptly to local law enforcement agencies. Because the standards for finding a violation of criminal law are different

from the standards for finding a violation of this Policy, criminal investigations or reports are not determinative of whether sexual misconduct, for purposes of this Policy, have occurred.

The filing of a complaint of sexual misconduct under this Policy is independent of any criminal investigation or proceeding, and the College will not wait for the conclusion of a criminal investigation or proceedings to commence its own investigation and take interim measures to protect the College community, if necessary.

Any member of the college community who believes he or she is a victim of sexual misconduct by a student or any 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.

#### B. Sex- or Gender-based Discrimination

Any member of the college community who believes he or she is a victim of sex- or gender-based discrimination by a student or any student who believes he or she was falsely accused of sex- or gender-based discrimination may seek private legal consultation and file criminal and/or civil charges in the Commonwealth of Virginia, as appropriate.

The filing of a complaint of sex- or gender-based discrimination under this Policy is independent of any criminal investigation or proceeding, and the College will not wait for the conclusion of a criminal investigation or proceedings to commence its own investigation and take interim measures to protect the College community, if necessary.

#### VIII. 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. 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: an oral or written statement to a student indicating that the behavior resulting in the reprimand is unacceptable and a violation of this Policy. Continuation or repetition of this conduct could result in further disciplinary action.
2. Probation: exclusion from the privilege of participation in college-related activities, including the holding of any student office for a specified period.
3. Suspension: exclusion from attending the college as a student for a definite period of time not to exceed one year.
4. 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.

In certain circumstances, a student may be referred for specialized help (e.g., psychological assistance, consultation with a counselor, and/or social service agencies) in lieu of or in combination with any of the aforementioned penalties. If this occurs, the student will be expected to periodically meet with the Dean of Administration, or designee, who will review the student's progress.

Denial of readmission may be imposed upon a student who has violated this policy 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.

Sanctions imposed are not effective until the resolution of any timely appeal or the expiration of the time to appeal. However, if advisable to protect the welfare of the complainant and/or the College community, the Dean may determine that any probation, suspension, or expulsion be effective immediately and continue in effect until such time as the Provost may otherwise determine.

#### IX. Appeals:

Students may appeal the decision made and/or sanction given in the formal or informal procedure to the Provost. The basis for the appeal will be limited to these grounds:

1. Excessively severe sanction;
2. New or newly-discovered evidence that may substantially affect the outcome of the case;
3. Procedural error which substantially affected the outcome of the case.

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

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

An appeal is not a re-hearing. It represents a procedural safeguard for the student and should not be used for anything other than that right and privilege. 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 Provost.

1. Once the student files an appeal, the Provost will be furnished a copy of the hearing file and records from the Office of Student Services.
2. Within ten (10) business days of receipt of the student's appeal, the Provost will notify the student of the date, time, and place of a meeting for the appeal.

3. During the appeal meeting, the Provost 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.

4. Within ten (10) business days of the appeal meeting, the student will be notified by the Provost of the decision.

#### X. Confidentiality; Final Outcome Letter

Documents prepared in anticipation of the hearing, including the Investigative Report, Notice of Hearing, pre-hearing submissions, documents, testimony, or other information introduced at the hearing, and any transcript of the hearing itself, may not be disclosed outside of the hearing proceedings, except as may be authorized or required by law. All written materials related to a complaint will be maintained under seal in a separate folder and not within the respondent's student file. However, upon a final decision that sexual misconduct or sex/gender discrimination has occurred, disciplinary action may include filing a copy of the decision in the student's file. Records will be maintained by the Office of Student Services for a period of five (5) years from the date of graduation of the respondent.

In addition to complying with Title IX and FERPA, the College is required to comply with the Clery Act. Under the Clery Act, both the complainant and the respondent must be informed of the hearing outcome, and the College may not impose any limitations on the re-disclosure of this information.

Accordingly, after the appeal or any time period for appeal has concluded, the Dean or designee will issue a written decision letter (the "Final Outcome Letter"), concurrently, to both the complainant and the respondent. As required by the Clery Act, the Final Outcome Letter will contain the name of the respondent, the violations of this Policy for which the respondent has been found responsible, and the sanction imposed, if any.

#### XI. Consensual Relationships

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

#### XII. 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 and sex/gender discrimination:

1. Publication of information on sexual misconduct and sex/gender discrimination and the prevention of sexual misconduct and sex/gender discrimination on the College website.
2. Information regarding College publications, courses, and training opportunities are routinely announced and disseminated throughout the college community.

3. The Title IX Coordinator will maintain a list of referral services that specialize in sexual assault. Students requesting assistance will be referred to the appropriate public agencies, while making every effort to protect the individual's confidentiality.

4. To assist college faculty and staff, Title IX Coordinator and Office of Student Success, maintains a list of referral services that specialize in sexual assault. Employees requesting assistance will be referred to the appropriate agencies, while making every effort to protect the individual's confidentiality.

### XIII. Additional Definitions:

"Clery Act" means the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. Section 1092(f); 34 C.F.R. Part 668.46.

The College has a designated Title IX Coordinator. Contact information for the Title IX Coordinator can be provided by contacting the Office of Student Services at the College.

"Complaint" means a written allegation of sexual misconduct, signed by the complainant, which includes a description and dates of the alleged act or acts of sexual misconduct and name of the respondent.

"Complainant" means an employee, student, or non-employee who files a complaint alleging that an incident or incidents of sexual misconduct have occurred.

"Effective Consent" means words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective Consent cannot be gained by force, by ignoring or acting in spite of the objections of another, or by taking advantage of the Incapacitation of another, where the accused student knows or reasonably should have known of such Incapacitation. Effective Consent is also absent when the activity in question exceeds the scope of Effective Consent previously given.

"Employee" means full and part-time teaching faculty, administrative and faculty, classified staff, and wage employees.

"FERPA" means the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99.

"Force" means physical force, violence, threat, intimidation or coercion.

"Incapacitation" means the physical and/or mental inability to make informed, rational judgments. States of Incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol [or other drug] is involved, one does not have to be intoxicated or drunk to be considered Incapacitated. Rather, Incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. The question is whether the accused student knew, or a sober, reasonable person in the position of the accused student should have known, that the complainant was incapacitated. Being intoxicated or drunk is never a defense to a complaint of Sexual Misconduct under this Policy.

“Investigators” mean the individuals designated by the Dean and/or Provost to conduct investigations of alleged Sexual Misconduct, and to determine whether or not there is good cause to grant a hearing, all as more particularly described below.

“Non-Employee” means individuals who are not employed by Bon Secours Memorial College of Nursing.

“Preponderance of Evidence” means the standard of judgment that indicates the weight of the evidence is sufficient to convince the fact-finder that the issue in question is more likely true than not.

“Respondent” means a person against whom a sexual misconduct complaint has been filed.

“Sexual Contact” means the deliberate touching of a person’s intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas), or using Force to cause a person to touch his or her own or another person’s intimate parts.

“Sexual Intercourse” means penetration (anal, oral or vaginal) by a penis, tongue, finger, or an inanimate object.

“Sexual Misconduct” is a broad term encompassing “Sexual Exploitation,” “Sexual Harassment,” “Non-Consensual Sexual Contact,” and “Non-Consensual Sexual Intercourse,” as defined in this Policy. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex.

“Student” means any person currently enrolled in at least one credit or non-credit course offered by the College.

“Verbal misconduct” means 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 may constitute misconduct if shown to be unwelcome and sufficiently pervasive or severe a condition to affect academic performance or employment. Verbal misconduct may constitute sexual harassment.

#### XIV. Resources:

The College provides resources to students and employees regarding education and treatment programs for the awareness of rape, acquaintance rape and other forcible and non-forcible sexual offenses.

Educational modules pertaining to sexual assault and safety awareness are completed annually by all students enrolled at the College. Audio visual resources on safety awareness are available in the library. These may be used for curriculum infusion. Pamphlets regarding sexual assault are made available to students as well.

YWCA of Richmond, Richmond, VA 23219

Business: 804-980-7301

Hotline: 804-643-0888

Website: <http://ywcarichmond.org>

Chesterfield County Domestic Violence Resource Center

P.O. Box 40

Chesterfield, VA 23832-0040

804-768-4783

[www.chesterfield.gov](http://www.chesterfield.gov)

Hanover Safe Place. Ashland, VA 23005

Toll Free: 888-370-SAFE (7233)

Local Hotline: 804-752-2702

[www.hanoversafeplace.com](http://www.hanoversafeplace.com)

Safe Harbor

P.O. Box 17996

Richmond, VA 23226

804-249-9470

[www.SafeHarborShelter.com](http://www.SafeHarborShelter.com)