



TOCC NONDISCRIMINATION & ANTI-HARASSMENT POLICY

**Approved by the Board of Trustees
August 13, 2020**

I. BACKGROUND

TOCC is firmly committed to maintaining an educational environment in which sexual and gender-based harassment and Sexual Assault, Domestic Violence, Dating Violence, Stalking (collectively, “sexual misconduct”) are not tolerated, and in which persons reporting sexual misconduct are provided support and avenues of redress.

In accordance with Title IX of the Education Amendment of 1972 (Title IX), the federal law that prohibits discrimination on the basis of sex in federally funded educational programs and activities, this policy provides for prompt, effective, fair, and impartial investigation and resolution of complaints against TOCC students or employees who are accused of sexual misconduct. Persons affiliated with TOCC who engage in Sexual Misconduct, including Aiding, Abetting, or Inciting Sexual Assault, or engaging in Retaliation (as defined below) are subject to disciplinary action up to and including permanent separation (i.e., expulsion).

Retaliation constitutes an independent violation of this policy whether or not the underlying complaint of Aiding, Abetting, or Inciting Sexual Assault is ultimately found to have merit.

This policy and procedure applies to all complaints of conduct regulated by this policy made by students, faculty, staff, or third parties, and will take precedence over any other TOCC policies and procedures with respect to such complaints.

This policy and its procedures supplement, and do not replace, the criminal justice system. Furthermore, TOCC is required to report and can assist with reporting to the Tohono O’odham Nation police department certain alleged crimes, including sexual assault, domestic violence, dating violence, and stalking. If the victim wishes to remain anonymous, their name and identifying information will be withheld from the information provided to the police department. All persons have the right to report and not report complaints beyond the College, and are encouraged to use law enforcement agencies, including the Tohono O’odham Police Department, regardless of whether they choose to pursue recourse through this policy.

TOCC designates the Title IX Coordinator/Clery Compliance Officer (“Title IX Coordinator”) as the individual charged with coordinating efforts to comply with Title IX. The Title IX Coordinator, either the Dean of Student Services or designee, addresses and oversees the investigation and resolution of all complaints related to sexual and gender-based harassment, including Sexual Misconduct and Assault, Sexual Harassment, Dating Violence, Domestic Violence or Stalking involving students, faculty, staff, and visitors. The Title IX Coordinator is available to meet with any person to provide information about resources, interim measures and options for investigation and resolution under this policy.

II. DEFINITIONS

Section I – definitions for the purpose of this policy:

- A. “Aiding, Abetting, or Inciting” means participating in, soliciting, directing, or assisting in Sexual Assault.

- B. “Appeals Official” is appointed by the President if an Appeal is filed after a written determination.
- C. “Clery Act” refers to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) is a federal mandate requiring all institutions of higher education (IHEs) that participate in the federal student financial aid program to disclose information about crime on their campuses and in the surrounding communities. The Clery Act affects virtually all public and private IHEs and is enforced by the U.S. Department of Education. Campuses that fail to comply with the act can be penalized with large fines (\$35,000) and may be suspended from participating in the federal financial aid program (34 C.F.R. §§668.14, 668.41, 668.46, and 668.49).

The Clery Act, formerly known as the Crime Awareness and Campus Security Act, was signed in 1990 and is named after 19-year-old Jeanne Clery, who was raped and murdered in her Lehigh University residence hall in 1986. Clery’s parents lobbied Congress to enact the law when they discovered students at Lehigh hadn’t been notified about 38 violent crimes that had occurred on campus in the three years prior to Clery’s murder.

- D. “Consent” means clear and unambiguous agreement, expressed in mutually understandable words or actions, to engage in a particular sexual activity. Whether valid consent has been given will be judged based upon what a reasonable person would have understood from such words or actions.

Consent must be voluntarily given and is not valid:

1. If obtained by physical force, coercion, or threat;
 2. When a person is incapacitated; or when an intellectual or other disability prevents a person from having the capacity to give consent.
 3. Consent to engage in one sexual activity, or agreement to engage in a particular sexual activity on a prior occasion, cannot be presumed to constitute consent to engage in a different sexual activity or to engage again in a sexual activity.
 4. Consent can be withdrawn by either person at any point.
- E. “Complainant” must be a current enrolled student at TOCC *who is alleged to be the victim* of conduct that could constitute Sexual Harassment.
 1. This clarifies that any third party as well as the complainant may report sexual harassment.
 2. While parents and guardians do not become complainants (or respondents), the Final Rule expressly recognized the legal rights of parents and guardian to act on behalf of parties (including by filing formal complaints) in the Title IX matters.

Note: Any person – regardless of race, color, religion, sex, age, sexual orientation, gender identity or expression, national origin, disability, or military/veteran status – may be a Complainant.

- F. “Incapacitation” means that a person lacks the capacity to give consent to sexual activity because the person is asleep, unconscious, mentally and/or physically helpless, or otherwise unaware that sexual activity is occurring. Incapacitation is not necessarily the same as legal intoxication. Where alcohol or other drugs are involved, evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person’s decision-making ability, awareness of consequences, ability to make informed, rational judgements, capacity to appreciate the nature and quality of the act, or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.
- G. “Dating Violence” is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, type of relationship, and the frequency of interaction between the persons involved in the relationship.
1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse;
 2. Dating violence does not include acts covered under the definition of domestic violence.
- H. “Domestic Violence” is defined as a felony or misdemeanor crime of violence committed:
1. By a current or former spouse or intimate partner of the victim;
 2. By a person with whom the victim shares a child in common;
 3. By a person who is cohabiting with, or has cohabitated with, the victim as a spouse or intimate partner;
 4. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 5. By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- I. “Formal Complaint” a document filed by a complainant (documented or electronic submission by email or online portal provided by TOCC). In addition, must contain Complainant’s physical or digital signature, or otherwise indicated that the Complainant is filing the formal complaint. Also may be signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and states:

1. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
 2. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator and by an additional method designated by the school.
 3. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a part during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias.
- J. “Informational Resolution” is an offer of mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. This does not apply to employee to student sexual harassment complaints.
- K. “Intentional Incapacitation” means providing alcohol or other drugs to a person with the intent to render the person incapacitated.
- L. “Interim Measures” may include but are not limited: separation of the Complainant and Respondent academic and living situations; temporary administrative suspension of the Respondent; no-contact orders; and restrictions on team or organization participation or activity.
- M. “Investigator” means the person designated to conduct an investigation under this policy.
- N. “Live Hearing with Cross Examination” TOCC will provide a live hearing as part of the grievance process. Cross examination must be conducted directly, orally and in real time by the party’s advisor of choice and never by a party personally. Only relevant questions to the complaint may be answered. TOCC must provide audio visual recording or transcript of any live hearing.
- O. “Respondent” means:
1. Any student who has been reported to by the perpetrator of conduct that could constitute: Sexual Harassment; Aiding, Abetting, or Inciting Sexual Assault; or Retaliation.
 2. Any Student – regardless of race, color, religion, sex, age, sexual orientation, gender identity or expression, national origin, disability, or military/veteran status.
- P. “Result” is defined as any initial, interim and final decision by the sanctioning panel (see Section IV.B.4). The result, which will be shared with the reporting and responding parties, will include a statement of any sanctions imposed, the rationale or reasons for those sanctions, and a statement that indicates how the standard of evidence used at TOCC, namely “preponderance of evidence, “was applied.

- Q. “Standard of Evidence and Written Determination” to determine responsibility is the preponderance of evidence standard or the clear and convincing standard applies to all formal complaints. The Decision Maker(s) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent.
- R. “Supportive Measures” individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. Supportive Measures does not second guess TOCC disciplinary decisions, but requires TOCC to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible.
- S. “Retaliation” means engaging in conduct that may reasonably be perceived to:
1. Adversely affect a person’s educational, living, or work environment because of their good faith participation in the reporting, investigation, and/or resolution of report of a violation of this policy; or
 2. Discourage a reasonable person from making a report or participating in an investigation under this policy.

Retaliation includes, but is not limited to acts or words that constitute intimidation, threats or coercion intended to pressure a person to drop or support a complaint under this policy or to provide false or misleading information in connection with an investigation; and pressuring a person to participate or refrain from participating as a witness in an investigation under this policy. Retaliation may constitute a violation of this policy even when the underlying report made in good faith did not result in a finding of responsibility.

- T. “Sanctioning Panel” Consists of 3 leadership staff at TOCC.
- U. “Sexual Assault” means unwanted or unwelcome touching of a sexual nature, including: fondling; penetration of the mouth, anus, or vagina, however slight, with a body part or object; or other sexual activity that occurs without valid consent.
- V. “Sexual Harassment” is any instance of *quid pro quo* harassment by a school’s employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA)

W. “Stalking” is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person’s safety or the safety of others; or
2. Suffer substantial emotional distress.

X. “Student” means an individual enrolled in any TOCC school or department, or a person enrolled in a TOCC educational program, whether or not currently in attendance. Conduct by a Student in the course of the person’s work as a TOCC employee is subject to this policy and may also form the basis for decisions concerning the individual’s employment.

Section 2 – definitions and citations in Tohono O’odham Nation Code:

Note: The definitions TOCC uses are those of Clery Act in Section 1 above; we are required to do so by federal law, however, TON definitions also apply as TOCC is within the Nation’s jurisdiction for:

- A. Sexual Assault: Chapter 9-Sexual and Related Offenses Sec. 9.1
- B. Consent: Not referenced in the Tohono O’odham Criminal Code
- C. Dating Violence: Not referenced in the Tohono O’odham Criminal Code
- D. Domestic Violence: Chapter 8-Offenses Against The Family Sec. 8.9
- E. Stalking: Chapter 7-Offenses Against Persons Sec. 7.10

The Tohono O’odham Nation Criminal Code may be referenced at:
<http://tolc-nsn.org/docs/Title7Ch1.pdf>

III. REPORTING SEXUAL ASSAULT OR OTHER VIOLATIONS OF THE POLICY Including dating violence, stalking, and domestic violence, all of which are defined in Section II of this policy.

TOCC strongly encourages the prompt reporting of violations of this policy to the College and to the police. A report may be made by the Complainant or by any other person with knowledge of the violation.

A. Contacts for reporting

Reports of violations of this policy should be made to:

Title IX Coordinator/Clery Act Compliance Officer

Email: titleIXCoordinator@tocc.edu

US Mail: Tohono O’odham Community College, PO Box 3129, Sells, AZ 85634

ATTN: Title IX Coordinator

Physical location: TOCC Main Campus HWY 86 MP 125.5 I-Wemta Ki Rm 18.

If the report is received by TOCC Security, they will promptly notify the Title IX Coordinator. The Title IX Coordinator and Security can take reports of sexual misconduct that involves students, faculty, staff, or other members of the community.

B. Reporting to Law Enforcement and External Agencies

To initiate a criminal investigation or prosecution, reports of Sexual Assault can be made by call 911. You can also contact the Tohono O'odham Policy Department at (520) 383-3275.

Note: If you are a victim of sexual assault, domestic, violence, dating violence, or stalking you have the right to contact law enforcement authorities. You are not, however, required to report to them. If you would like assistance in contacting law enforcement authorities, TOCC's Title IX Coordinator or Dean of Student Services, or Security Personnel will assist you in doing so. To make a police report, contact law enforcement and let them know clearly that you are making a report.

C. Timelines

To promote timely and effective review, TOCC strongly encourages Reporting Persons and other persons with knowledge of possible violations of this policy to make reports as soon as possible following the occurrence of the assault. A delay in reporting may impact the College's ability to gather relevant and reliable information. While prompt reporting is encouraged, the College will receive and investigate reports of possible violations of this policy until the Respondent has graduated or permanent termination enrollment.

D. Preservation of Information and Tangible Material

Preservation of information and tangible material relating to Sexual Assault is essential for both law enforcement investigations and campus disciplinary investigations. Therefore, Complainants, Respondents, witnesses, or others reporting possible violations of this policy, are encouraged to preserve all information and tangible material relating to the incident. Examples include electronic communications (e.g., emails and text messages), photographs, clothing, bedding, and medical information. In the case of medical information, prompt examinations can be crucial.

IV. TOCC's RESPONSE PROCEDURE

Upon receipt of a report, the College will generally proceed as described below.

A. Support and Initial Assessment; Interim Measures

Once the College is put on notice of possible violation of TOCC's Nondiscrimination & Anti-harassment Policy the Complainant and the Respondent will be offered appropriate support and other resources and notified of applicable policies. Both parties will be provided contacts for support, including confidential support.

The College will also appropriate steps to prevent and/or address retaliatory conduct following a report. The College will also promptly conduct an Initial Assessment. At a minimum, the Initial Assessment will include taking the steps necessary to assure a safe and nondiscriminatory environment for the Complainant and other members of the community:

1. Assess the nature and circumstances of the report.

2. Address immediate physical safety and emotional well-being needs of the Complainant or any other individual.
3. Notify the Respondent of the right to notify (or decline to notify) law enforcement if the conduct is potentially criminal in nature.
4. Notify the Complainant of the right to seek medical treatment to address physical health and, as appropriate, preserve physical or forensic evidence.
5. Assess the reported conduct to determine whether the circumstances pose a threat to the health or safety of the College community that warrants issuance of a “timely warning” under the Clery Act or a temporary administrative suspension.
6. Provide the Complainant and Respondent with information about on and off campus resources, the range of interim measures, an explanation of the procedural options for resolution under the policy and the College’s prohibition against retaliation.
7. Enter non-identifying information about the report into the College’s daily crime log if the conduct is potentially criminal in nature.

The College may also implement interim measures as may be appropriate for the individuals involved and for the larger College community. Interim measures may include but are not limited to: separation of the Complainant and Respondent academic and living situations; temporary administrative suspension of the Respondent; no-contact orders; and restrictions on team or organization participation or activity.

B. Informal Resolution

If TOCC in its discretion, may offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution.

At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

In matters of an employee sexually harassed a student, the Informal resolution process will not be offered.

The scope and timing of further investigation and/or action will depend upon a number of factors including:

1. Whether the Complainant requests confidentiality or that the investigation not be pursued;
2. Whether the Complainant wishes to make a disciplinary complaint under this policy;
3. Whether the College has an obligation to proceed with an investigation, regardless of the Complainant’s wishes, in order to ensure campus safety; and
4. Whether ongoing fact-gather by the police does not negate TOCC doing a Title IX investigation.

C. Grievance Process

Grievance proceedings under this policy may be initiated by: The Dean of Student Services

All complaints should be submitted to the Title IX Coordinator.

D. Investigation

Upon being notified that a person wishes to pursue a complaint of sexual misconduct, the Title IX Coordinator will review the complaint to determine whether the allegations, if proven, would constitute a violation of this policy. This evaluation will normally occur within one working days of the initial report. The student will be informed of any available interim measures.

- a. If it is determined that the allegations would not constitute a violation of this policy, the Complainant will be advised of other disciplinary, legal and support options as appropriate, and no further investigation under this policy will be pursued. If new information is subsequently provided, this decision may be reevaluated.
- b. If it is determined that the allegations would constitute a violation of this policy, the Title IX Coordinator prepares a report describing the alleged violation and the provisions of this policy alleged to have been violated.
- c. If, prior to or during the investigation of a complaint under this policy, either party alleges a violation of other College policies or standards of conduct arising from the same set of facts, all claims will ordinarily be investigated and have responsibility determined by the Title IX Coordinator assigned to investigate the complaint under this policy.
- d. Upon initiating the investigation, the Title IX Coordinator will notify both the complainant and the Respondent of the investigation. That notification will include a copy of the allegation/charge; the name and contact information of the Title IX Coordinator and a copy of this policy. The investigation will have 10 days for the parties to inspect, review and respond to the evidence.
- e. The investigation will be conducted in a prompt, fair, thorough, and impartial manner. It will include, at a minimum, speaking separately with the Complainant, Respondent and pertinent witnesses, and soliciting and reviewing documentation relevant to the investigation including available police reports. The Title IX Coordinator will provide the Complainant and Respondent with timely notice of Live Hearing.
- f. The Live Hearing with Cross Examination. The decision maker(s) must permit each party's advisor to ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility.
 - i. Cross examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

- ii. At this request of either party, the entire live hearing may take place in separate rooms with technology enabling the parties to see and hear each other (and will not be present together at any point). Live hearings may be conducted with all parties physically present in the same geographic location or, at TOCC's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
 - iii. Each party may have 2 advisors of their own choosing present with them at all meetings concerning the investigation. Answers may only be provided to relevant questions during the live hearing. The decision maker(s) will determine if a question during Cross examination is relevant.
 - iv. If a party does not have an advisor(s) present at the live hearing, TOCC will provide, without fee or charge to that party, an advisor of TOCC who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
 - v. If a party does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
 - vi. TOCC must create a live audio or audiovisual recording, or transcript, of any live hearing.
- g. All parties and witnesses are obligated to be completely honest during the course of the investigation. Any person who knowingly makes a false statement in connection with the investigation may be subject to College disciplinary action. False statements include statements that omit a material fact, as well as statements that the speaker knows to be untrue.
- h. The Title IX Coordinator may establish reasonable timeframes from the submission of information and the identification of potential witnesses by the parties prior to the preparation of the Title IX Coordinator factual findings and following the submission of the draft factual findings to the parties for their review. A reasonable time frame for such responses is generally defined as four calendar days.
- i. TOCC will create live record by electronic, stenographic, or other means to the extent permitted by law. The Title IX Coordinator will determine the conditions under which persons will have access to the recording in order to preserve confidentiality. Persons who fail to abide by these conditions may be subject to further disciplinary action.

E. Standard of Evidence and Written determination

All findings and determinations of responsibility under this policy will be made using preponderance of the evidence standard or the clear and convincing evidence standard. Written determination by the Decision Maker(s) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred,

rational for each allegation and any disciplinary sanctions imposed on the respondent and whether remedies will be provided to the Complainant. Information on how to file for an Appeal will be included.

The Title IX Coordinator will transmit the report to the Dean of Student Services who will promptly notify the parties, simultaneously and in writing.

F. Sanctioning Panel

If the Investigation has determined that the respondent is responsible for sexual misconduct under this policy, a Sanctioning Panel consisting of, at a minimum 3 leadership staff will convened.

In determining an appropriate sanction, the Sanctioning Panel will take into account the following:

- a. The impact of the misconduct on the Respondent or the community; protection of the College community.
- b. The Respondent's disciplinary (and, if known, criminal) history.
- c. The nature and circumstances of the misconduct.
- d. The way in which the College has sanctioned similar misconduct in the past.
- e. The enrollment pattern of the Complainant, giving due regard to the principle that the Student found responsible for misconduct under this policy should bear the burden of accommodating the Complainant and not the reverse, and the risk that a Complainant encounters with the Respondent may create a hostile and intimidating environment for the Complainant.
- f. The presence or absence of bias on account of race, color, religion, sex, age, sexual orientation, gender identity or expression, national origin, disability, or military/veteran status as a motivation in the misconduct.
- g. The Respondent's candor in responding to the complaint.
- h. Any other mitigating or aggravating circumstances in order to reach a just and appropriate resolution in each case.
- i. The sanction shall be separation from the College (i.e., expulsion) where:
 - i. The Title IX Coordinator has determined that Respondent, by use of physical force, threat, or Intentional Incapacitation of the Complainant, engaged in either (A) any form of sexual penetration (anal, oral, or vaginal), however slight, by a body part or object; or (B) oral-genital, oral-anal, or genital-genital contact; or

- ii. The Title IX Coordinator has determined that the Respondent engaged in any form of sexual penetration, oral-genital contact, oral-anal contact, or genital-genital contact, as described above, and was motivated by bias on account of race, color, religion, sex, age, sexual orientation, gender identity or expression, national origin, disability, or military/veteran status; or
 - iii. The Respondent has previously been found responsible for Sexual Misconduct.
- j. In case not covered by paragraph (i) above, where the Title IX Coordinator has determined that the Respondent intentionally engaged in any form of sexual penetration or oral-genital, oral-anal, or genital-genital contact, as described above, there is a strong presumption that the sanction will be separation from the College.

The Sanctioning Panel will also identify permanent remedies to address the effects of the conduct on the Complainant, restore the Complainant's safety and well-being, and maximize the Complainant's educational and employment opportunities. Such remedies should restore to the Complainant to the extent possible all benefits and opportunities lost as a result of the prohibited conduct. Permanent remedies may include extending or making permanent any interim measures.

G. Appeal

- a. Either party may, within five (5) calendar days of receiving notice of the decision, request an Appeal of the decision by submitting to the Dean of Student Services, with a copy to the Title IX Coordinator, a letter stating why the party requesting an Appeal and believes the finding of responsibility or the sanction should be set aside. A party may only request an Appeal on the following grounds:
- i. That the Title IX Coordinator, Decision Maker(s) or the Sanctioning Panel committed procedural error which materially prejudiced the party requesting review's case;
 - ii. That the Decision Maker(s) findings or the Sanctioning Panel's decision should be reconsidered because of newly discovered information which was not reasonably available to the party requesting review during the investigation and which would likely have affected either the finding of responsibility or the sanction imposed had it been available; or
 - iii. That the sanction imposed is excessive, insufficient, or inappropriate.
 - iv. A request for review must set forth in reasonable detail the grounds for review, and must have attached to it all materials that the party requesting review wishes to have considered.
- b. The President will designate the College official ("Appeals Official") to consider each request for review. The Appeals Official will decide in their sole discretion whether the request states one of the allowable grounds for review. If the Appeals Official decides that the request states an allowable ground for review, they will

notify the parties that the request will be considered and invite the other party to submit, within five (5) calendar days, a statement and supporting materials in response to the submission of the party requesting review.

- c. The Appeal's Official will consult with the President concerning the request for review. The Reviewing Official may also consult with the TOCC attorney, the Investigator, and with Sanctioning Panel with respect to requests to review the sanction.
- d. The Appeals Official may affirm the Investigator's, Decision Maker(s) or Sanctioning Panel's findings, reverse and remand the matter for further consideration, or refer the matter to a different Investigator for further consideration. If the matter is remanded to the Investigator or the Sanctioning Panel or referred to a different Investigator, the Appeal Official will provide corrective instructions with the remand/referral. The Appeal Official's decision will be in writing and, except in the case of a remand/referral, is final.
- e. In the event of a remand or referral, the original or new Investigator, Decision Maker(s) or the Sanctioning Panel, as the case may be, may conduct such further proceedings as they deem appropriate under the circumstances, consistent with this policy. Review of decisions on remand may be requested by either party under the above procedure.

H. Timeframe for Completion of Investigation and Disciplinary Process

The College will ordinarily complete its investigation and disciplinary process, if any, within twenty (2) calendar days. All timeframes set forth in this policy may be extended by the Dean of Student Services or President for good cause, with written notice to the Complainant or Respondent of the delay and the reason for the delay.

V. STUDENT EXPECTATIONS AND RIGHTS

A. Confidentiality; Respect for Privacy

Information regarding investigations conducted as part of the disciplinary process, including sanctioning determinations, will be shared among College officials with a legitimate educational interest or with external individuals or entities only on a need-to-know basis and only as permitted by College policy and applicable law. The College may choose to comment publicly, in writing or otherwise, to the extent permitted by law, regarding the decision reached if, in the judgment of the College, the best interests of the community would be served by such a disclosure. If possible and appropriate, the anonymity of the student(s) or employees involved will be protected. The responsible party for determining whether information will be provided is the Title IX designee or the Dean of Student Services. The report of crime statistics that TOCC collects pursuant the Clery Act will not include any personally identifiable information about the victim of the crime.

B. Training of Officials Conducting Proceedings

All persons involved (Title IX Coordinators, investigators, decision-maker(s), people who facilitate any Informal Resolution process) to be free from conflict of interest or bias for or against complainants or Respondents.

- a. Training on the definition of Sexual Harassment
- b. How to conduct an investigation and grievance process
- c. How to serve impartially
- d. Decision Maker(s) training on any technology to be used at a live hearing, issues of relevance, on how to apply the rape shield protections provided only for complainants.
- e. Post all trainings on TOCC website for public to inspect

C. Protection from Retaliation

The College will take appropriate steps to ensure that a person, who in good faith reports or participates in an investigation under this policy, will not be subjected to Retaliation by the Responding Person or others. Anyone who believes that they are experiencing Retaliation is strongly encouraged to report that concern using the procedure for the reporting violations of this policy.

D. Coordination with Concurrent Legal Proceedings

Persons may report to law enforcement and/or engage in civil litigation in connection with the same behavior that forms the basis of a report under this policy. Where a Reporting Person or another person with knowledge of possible violation of this policy has reported to law enforcement, the College will fulfill its responsibility to take prompt and appropriate action to provide protection and resources to the Reporting Person.

The College will, however, comply with valid requests by law enforcement for cooperation in a criminal investigation and may need to delay temporarily an investigation under this policy while law enforcement is in the process of gathering evidence. Once law enforcement has completed its gathering of evidence, the College will resume and complete its investigation. If the Complainant wishes to pursue disciplinary charges under this policy while criminal proceedings are pending, or if the College determines that disciplinary proceedings should proceed, the College will not wait for the conclusion of the criminal case to proceed with the disciplinary process.

If the College finds that TOCC's Nondiscrimination & Anti-Harassment Policy has been violated, it will take effective steps to end it, prevent its recurrence, and address its effects, regardless of whether external legal proceedings are pending.

E. Advisors and Support Persons; Attorneys

Both Complainant and Respondent are entitled to have two advisors per student and/or observer of their choice accompany them at any meeting related to the investigation. The meeting facilitator may remove any person who distracts or disrupts the process.

F. Conflict of interest

Any persons exercising authority under this policy who believe they may be unable to exercise that authority impartially in any case shall excuse themselves from the matter and will be replaced with another person. If the Complainant or Respondent believes a person exercising authority under this policy has a personal professional, or financial involvement with the Complainant or Respondent that would prevent the person from exercising their authority impartially, they may make a prompt objection to the Title IX Coordinator.

If the Title IX Coordinator determines that the objection is reasonable, the challenged person will be replaced with another person. Because TOCC is a small community, knowledge of or acquaintance with the student(s) and/or witnesses in a matter, awareness of a matter, participation as a consequence of one's official role in events surrounding a matter, and/or participation in the investigation process prior to the formal disciplinary process, will not automatically be grounds for disqualification. The decision of the Title IX Coordinator regarding a challenge will be final.

G. TOCC Supportive Measures

The essential elements of this policy, including the behaviors that are specifically forbidden, will be presented to all incoming students during their orientation sessions. All new employees will also be oriented to this policy. Both new students and incoming employees will be required to sign a statement indicating that they are aware of TOCC's Nondiscrimination & Anti-Harassment Policy.

All faculty, staff, and students will be referred to personal handbook or the student handbook, which provides information on TOCC's Nondiscrimination & Anti-Harassment Policy.

TOCC will provide ongoing prevention and awareness measures including programming, initiatives and strategies that are sustained over time. The programming, initiatives and strategies will focus on increasing the understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault and staling, using a range of strategies with audiences throughout the institution. This will promote awareness of the services and programming at our institution. TOCC will use multiple supportive strategies in a coordinated way throughout the year to reach all populations of students and employees at the institution. These will include but are not limited to:

- a. Communication strategies, such as social media posts, email blasts, notices on bulletin boards, poster, and/or KOHN 91.9 and *The Runner* advertisements;
- b. Programming, such as Take Back the Night events or Safe Walk services, and the materials used to promote these activities;
- c. Programming coordinated with and delivered to individual groups on campus (e.g., presentations or workshops for individual sports teams, fraternity or sorority houses, or residence halls);
- d. Booths at student fairs or other campus events; and/or
- e. Historical Trauma, overcoming grief, and dealing with symptoms of PTSD
- f. Virtual Counseling
- g. Trauma Informed Care

- h. Faculty discussing issues and available services in the classroom, or advertising programs or events.
- i. Partnerships with TOPD, Behavioral Health, Domestic Violence Program, Fire Department, Border Patrol
- j. TOPD: Active Shooter, Drug Identification, Sexual Assault, Campus Safety
- k. Behavioral Health: Professional Counseling, Sexual Awareness
- l. Domestic Violence: Healthy Relationships, Dating Violence
- m. Fire Department: CPR & Fire Aid, Fire Safety
- n. Border Patrol: Awareness on Undocumented individuals, climate awareness

VI. OTHER MATTERS

A. Rapid Response

To prevent delays, when positions authorized to exercise responsibility under this policy are vacant, or during the unavailability of persons holding those positions, the President may designate other persons to exercise their authority under this policy.

B. Protection Orders

TOCC does not issue protection orders. The Tohono O'odham Nation Court does issue protection orders. TOCC will comply with and will support students and staff in honoring protection orders. If a student or staff members has a protection order that is designed to provide protection and if that student or staff member is concerned that the order may be violated, the proper course of action is to notify the Title IX Coordinator or the VP of Student Services and they will assist in enforcement on campus and in any transportation the College provides.

C. Sex Offender Registry

If registered sex offenders are enrolled at or employed at a postsecondary institution employees and student will informed through the following steps:

1. Email
2. Text message
3. Posted in Reception area on all campuses

This registry is available for Arizona via the following link:
http://www.azdps.gov/services/sex_offender/

The Title IX Coordinator can help you do further checking into sex offender registries should you request any assistance.

APPENDIX I.

List of available services for victims of sexual assault, domestic violence, stalking, or dating violence.

Tohono O'odham Nation:

- A. Victim Witness Program 520-383-6000
- B. Mother and Fatherhood is Sacred Family Preservation 520-383-6000
- C. Tohono O'odham Nation Health Care (TONHC) Emergency Room 520-383-7280
- D. EMS AJ Medical Transport 520-383-1400 (San Isidro Local service)
- E. TONHC EMS Dispatch 520-383-7307
- F. TON Police Department 520-383-3275
- G. TONHC Behavioral Health 520-383-6165 (Sells) and 520-295-2570 (San Xavier)
- H. Komckud Ki Domestic Violence and Sexual Violence Prevention Program 520-383-6165
- I. Court Ordered Domestic Violence Perpetrator Program 520-383-6165
- J. TONHC Adult Protective Service 520-383-6000
- K. I:mig, LLC Mental Health Services 520-904-4830 or carolineantone@msn.com
- L. Tohono O'odham Nation Warm Line 1-844-423-8759
- M. Tohono O'odham Nation DV Program 520-383-6200 toll free 1-866-666-4889

Outside Tohono O'odham Nation:

- A. National Suicide Prevention Lifeline 1-800-273-8255
- B. Southern Arizona Center for Sexual Assault (SACASA) 520-327-1171
- C. Su Vos Vale 520-434-0195
- D. Hands of a Friend 520-648-3589
- E. Emerge! Crisis Line 520-795-4266; toll free 1-888-428-0101 website: info@emergecenter.org
- F. Wingspan Anti-Violence Project crisis line 520-624-0348; toll free 1-800-553-9387

