

Sexual Misconduct Policy

PURPOSE

Alamance Community College (the “College” or “ACC”) is committed to providing an educational environment in which all employees and students, without regard to sex, sexual orientation or gender identity, have a right to work and learn free from sexual harassment and sexual violence. Sexual misconduct is prohibited, and the College will promptly, fairly, and impartially address complaints through its Title IX procedures or when a sexual misconduct complaint falls outside the jurisdiction of Title IX. The College will apply its student conduct procedures or grievance procedures as appropriate to the particular complaint. This policy applies to sexual misconduct that occurs within the scope of the College’s educational programs and activities (both on-campus and off-campus) against a person in the United States. The College will provide supportive measures as well as compliant resolution options to its students, applicants and employees who are alleged victims.

Sexual harassment and sexual violence are deemed forms of sex discrimination prohibited by Title IX of the Educational Amendments of 1972 (and Title IX Final Rule 2020) which prohibits sex discrimination against students and employees in educational institutions which receive federal funds and by Title VII of the Civil Rights Act of 1964, as amended, which prohibits sex discrimination in employment and by North Carolina General Statutes 136-16.

DEFINITIONS AND PROHIBITED CONDUCT

- Prohibited conduct includes sexual harassment as defined in Title IX Final Rule 2020:
 - An employee of the College conditioning educational aid, benefit or service on an individual’s participation in unwelcome sexual conduct (quid pro quo harassment) as prohibited in the Title IX Final Rule 2020.
 - Offenses defined in the Clery Act and the US Violence Against Women Reauthorization Act of 2013 (including sexual assault, dating violence, domestic violence, and stalking on the basis of sex as prohibited in Title IX Final Rule 2020.
 - Unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal educational access, as prohibited by in Title IX Final Rule 2020.
- Prohibited conduct includes any form of sexual violence. (These are physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability or a medically diagnosed impairment.) Sexual violence includes:
 - VAWA and Clery Act offenses
 - Any form of sexual violence defined as a criminal sex crime in North Carolina G.S. 14-27.1 and G. S. 50B – 1 (including rape, sexual battery and sexual coercion).

- Prohibited conduct includes unwelcome verbal and/or physical conduct of a sexual nature or with sexual implications, based on sex or sexual stereotyping, when the conduct is sufficiently severe or pervasive as to create a hostile work or learning environment when evaluated from the standpoint of a “reasonable person” and consistent with First Amendment protections of free speech and academic freedom.

REPORTING OPTIONS

Any person may report sexual misconduct (harassment or violence) to one or more of the following: the Title IX Coordinator (who is ACC’s Director of Human Resources), a College “responsible employee,” a College “counselor/advisor,” their employment supervisor, a College Public Safety official, a local law enforcement officer, a local medical professional, a local mental health professional or a pastoral counselor. A report may be made in person, by mail, by telephone, or by email. Upon receipt of a complaint, the Title IX Coordinator will determine whether the complaint meets the condition of the Title IX Final Rule 2020. If so, the Title IX response process will be initiated. If not, the complaint will be referred to the appropriate student conduct or employee grievance contact person. In all cases, the Title IX Coordinator will contact the complainant confidentially to discuss the availability of supportive measures and to explain the process for filing a formal complaint. Supportive measures are individualized reasonably available services designed to ensure equal educational access, protect safety, or deter sexual harassment; and the steps taken must be non-punitive, non-disciplinary, and not unreasonably burdensome to the accused party.

College “responsible employees” are all faculty members, administrators, and support staff (including student employees and contracted service providers) except the Title IX Coordinator and designated “counselors/advisors”; all student services staff members except designated “counselors/advisors”; and ACC Public Safety staff. A “responsible employee” shall report to the College’s Title IX Coordinator or designee relevant details of instances of sexual misconduct made known to him or her, and he/she shall inform the complainant of his/her right to file a Title IX complaint with the College and to report a crime to ACC Public Safety and/or local law enforcement.

College “counselors/advisors” are not considered “responsible employees” for reporting purposes but are counselors/advisors whom students or employees may consult confidentially for support and information. These designated individuals are the Director of Student Success, Coordinator of Disability Services and counselor trainees working under the supervision of a professional counselor, ACC-selected/appointed sexual assault responders designated and appointed for a term of service by the Vice President of Student Services and ACC-approved third parties providing confidential counseling services on the campuses or by referral. These “counselors/advisors” are not required to report incidents except as described below, and they will provide information about support services students can use whether or not they file a complaint on-campus or with off-campus authorities. “Counselors/advisors” will report incidents under certain specific circumstances, including an informed consent release by the complainant, a threat of harm to self or others, a court order, or harm to minors. (NCGS 14-27.5)

There is no time limit to invoking this policy to respond to alleged sexual misconduct. However, complainants are encouraged to report allegations of sexual misconduct immediately in order to maximize the College’s ability to obtain the relevant information and witness testimony needed to complete a thorough and impartial investigation. The College will strive to resolve complaints within 60 days of the initial report (not including appeal processes) unless fact-finding is delayed to defer to law enforcement evidence gathering, or if other “good cause” delays or special circumstances such as College break periods apply. Complainant and respondent (accused) will be notified in writing of extensions and delays.

A third party complaint, made on behalf of someone else who has been the victim of sexual misconduct/harassment/violence, will be investigated by ACC. Complainants should be aware it may be difficult to keep the victim's identity confidential during the investigation because of the circumstances of the charge.

CONFIDENTIALITY

In general, the College will obtain consent from the complainant before beginning a Title IX or other investigation. The College will keep confidential the identity of complainants, respondents (accused persons) witnesses except as permitted by FERPA, as required by law, or as potential criminal conduct. College officials reserve the authority to determine, consistent with State and local law, whether appropriate law enforcement authorities should be notified. If the College determines the alleged perpetrator poses a serious and immediate threat to the College community, the Director of Public Safety will be called upon to issue a timely warning to the community as required by the Clery Act. Such a warning does not include information that identifies the victim.

If the complainant requests confidentiality or asks that the complaint not be pursued, the College will take reasonable steps to investigate and respond to the complainant consistent with the complainant's request. The College will inform the complainant that its ability to respond may be limited. The College's Title IX Coordinator or designee will evaluate the complainant's request for confidentiality in the context of ACC's obligation to provide a safe environment for students and employees, and will inform the complainant prior to starting an investigation if it cannot ensure confidentiality. At minimum in every case of reported sexual harassment and sexual violence, an anonymous report of the incident must be provided by the Title IX Coordinator to ACC Public Safety staff in order to comply with campus crime reporting (Clery Act) requirements.

The College will maintain as confidential any accommodations or protective measures provided to students or employees, to the extent that confidentiality does not impair the ability of the College to provide the protective measures and does not infringe on the due process rights of an accused person.

RETALIATION

Those who make complaints or otherwise participate in investigative and/or disciplinary processes under this policy are protected from retaliatory acts. No employee or student may engage in interference, coercion, restraint, or reprisal against any person alleging sexual misconduct. Perpetrators of retaliation will face disciplinary action. Likewise, claims of sexual misconduct that are substantiated as malicious or frivolous may result in disciplinary action against the instigator.

RESOLUTION OPTIONS

Informal Resolution Options:

The complainant has the right to end an informal resolution process at any time and pursue formal resolution.

1. Confidential consultation with the Title IX Coordinator or designee for support, information, and/or exploration of possible actions.
2. Confidential counseling and referral: "Counselors/advisors" as designated in this policy may counsel a student confidentially to provide support, information, referral, and/or exploration of possible actions.
3. For complaints subject to the Title IX Final Rule 2020, the two parties can agree to engage in an informal resolution process in lieu of a formal investigation, except in cases that allege quid pro quo

harassment. Both parties must give voluntary, informed and written consent. Informal resolution options are not available under the Title IX Final Rule 2020 when the accused person is an employee.

4. Informal voluntary mediation, contingent on the availability of qualified mediators and on the voluntary, informed and written consent of both parties. This option is available only for complaints of sexual violence including but not limited to rape, sexual abuse, sexual assault and sexual battery.

Formal Resolution Options:

The complainant has the right to pursue the applicable following options individually or simultaneously:

A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator, alleging sexual misconduct and requesting that the College investigate the allegation of sexual misconduct. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in, the educational program or activities of the College. The document must be filed with the Title IX Coordinator in person, by mail, or by electronic submission and must contain the complainant's physical or digital signature. If the allegations in a formal complaint do not meet the definition of sexual harassment in the Title IX Final Rule 2020, or did not occur in the College's educational program and activities against a person in the United States, then the Title IX Coordinator will dismiss the complaint under Title IX Final Rule 2020 and will refer the complaint to the College's Student Code of Conduct procedures (if the accused person is student) or to the employee grievance procedure policy (if the accused person is an employee or contracted employee.) The Title IX Coordinator will notify the parties in writing when a complaint is dismissed under Title IX Final Rule 2020 and the reasons for the dismissal.

1. If the case is addressed under the Title IX Final Rule 2020, it will be investigated and adjudicated under the College's Title IX procedures. A description of the Title IX investigation and grievance procedures may be obtained from the Title IX Coordinator. Adjudication includes the provision of a live hearing with cross-examination. Both parties have the right to appeal a determination regarding responsibility, or the dismissal of the allegations in a formal complaint, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the complaint, or Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.
2. If the case is dismissed under Title IX Final Rule 2020, and the accused is an Alamance Community College student, the College will follow its student grievance procedures/student conduct process as described in the student handbook, including appeal procedures described. Note that the:
 - investigation and resolution will be prompt, fair and impartial;
 - standard of evidence for a finding of "responsible" is preponderance of the evidence;
 - accuser and accused are entitled to have an advisor of their respective choice present at a disciplinary proceeding and any related meetings. An advisor serves on a consulting (non-participatory) basis in a disciplinary hearing; and,
 - sanctions assigned to a student found responsible include one or more of the following: oral warning, written warning, educational or community service sanction, general probation, restrictive probation, suspension, explicit and/or indefinite dismissal.
3. If the case is dismissed under the Title IX Final Rule 2020 and the accused is an Alamance Community College employee or contracted employee, the College will follow its employee grievance procedures, including appeal procedures. An employee found responsible will be assigned one or more of the following disciplinary sanctions: oral warning, written warning, special training appropriate to the findings, probation, suspension or dismissal.

4. File a criminal complaint with the applicable local law enforcement agency. Public Safety staff will assist with this process.
5. File a complaint directly with the appropriate Federal or North Carolina agency (ex. Equal Employment Opportunity Commission, Office of Civil Rights). Contact information may be obtained from the Title IX Coordinator.

NOTIFICATION OF OUTCOME

For cases adjudicated under Title IX Final Rule 2020, a written determination by the decision-maker addressing criteria described in the Final Rule must be sent simultaneously to the parties along with information about how to file an appeal.

For cases adjudicated under the Student Code of Conduct or the employee grievance procedures, the College will notify the accused in writing whether or not it found that sexual misconduct occurred, all disciplinary sanctions assigned in the case, and information about how to file an appeal. The College will notify the complainant in writing of the finding whether or not sexual misconduct occurred, any individual remedies offered to the complainant, other steps the College has taken to eliminate a hostile environment and prevent recurrence, and, information about how to file an appeal. The College will disclose to the complainant matters about disciplinary sanction(s) assigned to the accused that are directly related to the complainant's participation in the College's educational program and activities.

Names of any other persons, such as a victim/survivor or witness, will be included only with the consent of those persons. The College will not require a party to abide by a nondisclosure agreement that would prevent the re-disclosure of information related to the outcome of the proceeding.

TRAINING AND EDUCATION

The College expects all employees and students to participate in training and education on sexual harassment and sexual violence topics at regular intervals. Training and education topics and content provided by the College will be consistent with Title IX and Campus SaVE Act regulations and recommendations. Employees in specific roles will participate in specialized training. Those roles include Title IX Coordinator, responsible employees, counselors/advisors, complaint investigators, hearing officials, grievance committee members, and Public Safety staff. The sexual misconduct policy and procedures will be published in key College publications (ex. General Catalog, Student Handbook, Employee Handbook, College web site) and made widely available to members of the College community.

Approval:

Chair, Board of Trustees _____

Effective Date: September 14, 2020

Policy Owner: Human Resources