



Asheville-Buncombe Technical Community College

(A-B Tech) Procedure

Procedure 111: Non-Discrimination and Harassment

Introduction:

Non-Discrimination Statement

The A-B Tech Board of Trustees and administration are fully committed to encouraging and sustaining a learning and work environment that is free from prohibited discrimination. The College does not practice or condone discrimination based on race, color, national origin, religion, sex, sexual orientation, gender identity or expression, pregnancy, disability, genetic information/medical history, age, political affiliation or veterans' status in the administration of any of its academic programs and employment practices.

For allegations of discrimination or harassment related to sex, sexual orientation, gender identity or expression, or pregnancy, please refer to the Sexual Misconduct Policy and Procedure #112.

Statements of Prohibition:

Prohibition of Retaliation

The College strictly prohibits punishing students or employees for asserting their rights to be free from discrimination or harassment. Retaliation against any person participating in connection with a complaint of discrimination or harassment is strictly prohibited. Reports of retaliation will be addressed through this procedure and/or other applicable College procedures. Retaliation includes, but is not limited to, any form of intimidation, punitive actions from authority figure or peers, reprisal (acts of vengeance) or harassment. Retaliation is a serious violation and should be reported immediately. The College will take appropriate disciplinary action against any employee or student found to have retaliated against another.

Prohibition of Providing False Information

Any individual who knowingly files a false report or complaint, who knowingly provides false information to College officials, or who intentionally misleads College officials involved in the investigation or resolution of a complaint may be subject to disciplinary action including, but not limited to expulsion or employment termination. The College recognizes that an allegation made in good faith will not be considered false when the evidence does not confirm the allegation(s) of discrimination or harassment.

Individuals Requesting Accommodations:

Students

Students with disabilities (as defined in the Americans with Disabilities Act of 1990, "ADA") wishing to make a request for reasonable accommodations, auxiliary communication aids or services, or materials in alternative accessible formats should contact the Support Services Office in the K. Ray Bailey Student Services Center. The Support Services office can be reached at (828) 398-7581. Information provided by students is voluntary and strict confidentiality is maintained. A-B Tech is invested in full compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

Employees

A-B Tech understands that most employees with disabilities, medical conditions, or serious illnesses benefit greatly from the normal routines of daily life. When such an employee is able to meet approved standards of job performance as outlined by the College, and the medical information indicates that the disability or condition does not endanger the employee, other employees, students, or the public, he or she must be treated fairly and consistently with and by other employees.

If an employee has a disability, medical condition, or serious disease, he or she should notify the College if it could adversely affect the health or safety of other employees or students, impair the employee's ability to safely and effectively perform their job, or the employee would like the College to consider a reasonable accommodation for a disability.

All medical information will be maintained in a separate benefits/medical file in the Human Resources Department. Access to the benefits/medical records and related discussions will be strictly limited to those with a legitimate need to know this information and/or those with legal authority for access to them.

Consistent with the College's policy, A-B Tech will provide a reasonable accommodation for qualified applicants and employees with disabilities in accordance with the Americans with Disabilities Act (ADA), as amended, unless such accommodation would cause an undue hardship for the College. For the purpose of this policy, disability, reasonable accommodation, and undue hardship will be defined in accordance with the ADA.

A-B Tech will also provide a reasonable accommodation of an employee's religious beliefs/practices provided such expression/practice does not create a hostile work environment for other employees and/or the accommodation does not cause an undue hardship for the College.

Confidentiality:

Standards of Confidentiality

The College will respect and make every reasonable effort to preserve the confidentiality of the information and identities shared by the parties involved in an alleged discrimination or harassment matter. College administrators will, however, share information regarding an alleged incident, as appropriate and necessary, in order to address and resolve the allegation. In cases where the Complainant or reporting party requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim support and remedies to the Complainant but will not otherwise pursue formal action against the Respondent. However, in cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. The College administrators will evaluate the following when determining if a report can remain confidential:

- the seriousness of the allegation;
- the alleged Complainant's age;
- whether there have been other complaints of discrimination or harassment against the Respondent; and
- the applicability of any laws mandating disclosure to local law enforcement.

Dissemination of information and/or written materials to persons not involved in the resolution process is not permitted. Violations of the privacy of the reporting party or the responding party may lead to disciplinary action by the College which could include expulsion or employment termination.

Confidential Resources

If a Complainant would like to speak confidentially with someone about the details of an incident, the Complainant may contact:

On campus – Student Resources

- Professional counselors in the K. Ray Bailey Student Services, Asheville Campus (and by appointment at all A-B Tech instructional sites). Students may schedule an appointment with a counselor by calling (828) 398-7584 or (828) 398-7581. A-B Tech Counselors will maintain confidentiality except in cases of imminent harm to self or others or in cases related to the abuse of a child, elder, or dependent adult. Counselors are available to help free of charge and can be seen on an emergency basis during normal business hours.

Off-campus – Student and Employee Resources

- Mobile Crisis Management Services – 888-573-1006 (Community Counseling)
- Employee Assistance Network (EAN) 828-252-5725 (Support services for A-B Tech employees)

Reporting Options:

Reporting to College Officials

Vice President for Student Services – Incidents solely between students may be referred directly to the Office of the Vice President.

Vice President, Student Services

Asheville Campus

828-398-7146

terrygbrasier@abtech.edu

Online reporting:

[Incident Report Form](#)

Executive Director, Human Resources - Incidents solely between employees may be referred directly to the Office of the Vice President.

Executive Director, Human Resources

Asheville Campus

828-398-7178

Student/Employee Allegations - For allegations between students and employees, you may contact either the Vice President for Student Services or the Executive Director, Human Resources. The Vice

President for Student Services or designee will work in partnership with the Executive Director, Human Resources or designee to investigate and resolve the allegation.

A-B Tech Police and Security - The A-B Tech Police and Security Department is located across from the parking deck in the Mission Health/A-B Tech Conference Center and can be reached by phone at (828) 398-7125. A-B Tech Police Officers are available 24-hours a day, seven days a week. To reach the on-duty officer, call (828) 279-3166.

Anonymous Reporting - Individuals may also file anonymous reports by completing the [Incident Report Form](#). It may be very difficult for the College to take action on anonymous reports where supporting information is limited. Anonymous reports may be used for statistical reporting purposes.

Reporting to Local Law Enforcement:

Individuals may report discrimination or harassment directly to local law enforcement agencies by dialing 911. Individuals who make a criminal allegation may also choose to pursue College disciplinary action simultaneously. A criminal investigation into the matter does not release the College from its obligation to conduct its own investigation. However, the College's investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, the College must take interim measures when necessary to protect the alleged Complainant and/or the College community.

Individuals may choose not to report alleged discrimination or harassment to law enforcement authorities. The College respects and supports individuals' decisions regarding reporting; nevertheless, the College may notify appropriate law enforcement authorities if required or warranted by the nature of the allegations.

Reporting Timeframe:

Individuals filing discrimination or harassment complaints are urged to do so in writing as soon as possible and will be promptly and thoroughly investigated. Individuals should recognize that delays in reporting may impair the ability of College officials to investigate and respond.

Federal Statistical Reporting Obligations – Hate Crimes:

Hate crimes that are reported pertain to crimes that manifest evidence that the Complainant was intentionally selected because of the Complainant's actual or perceived race, gender, religion, sexual orientation, gender identity, ethnicity, national origin or disability. Hate crimes include criminal homicide, sex offense, robbery, aggravated assault, burglary, motor vehicle theft, arson, larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property or any other crime involving personal injury.

According to the Jeanne Clery Act, all personally identifiable information is kept confidential, but statistical information must be shared with campus law enforcement. The information to be shared includes the date, the location of the incident and the crime category. This reporting protects the identity of the Complainant and may be done anonymously. The College's Annual Security Report helps to provide the community with a clear picture of the extent and nature of campus crime, in order to build community safety and awareness. To see a copy of the report, go to the College website under Consumer Information or go to the following link: [Campus Police and Security](#).

Investigation Process

Investigative Timeline:

The College will make every reasonable effort to ensure that the investigation and resolution of a complaint occurs in as timely and efficient a manner as possible. The College's investigation and resolution of a complaint will generally be completed within 60 calendar days of the receipt of the complaint, absent extenuating circumstances. Any party may request an extension of any deadline by providing a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request.

Interim Measure:

If at any point during the initial report, investigation, disciplinary, or appeal process the College administrator deems it necessary for the protection of any member of the College community, they may take actions such as the following for students:

- Temporarily suspend the Respondent for up to ten (10) College business days;
- Change the Respondent's and/or Complainant's class schedule;
- Take such steps as are reasonable, appropriate and necessary to restrict the Respondent's movement on campus.

For employees, the College administrator may take the following actions:

- Take such steps as are reasonable, appropriate and necessary to restrict the Respondent's movement on campus;
- Request that the President place the Respondent on temporary paid administrative leave or reassign the Respondent to other duties.

Student Investigations:

Initial Meeting - Complainant

As soon as is practicable, the Vice President for Student Services or designee will contact the Complainant to schedule an initial meeting. During these initial meetings, the Vice President for Student Services or designee will:

- Work with student to stop and remedy the impact of the current situation;
- Implement safety measures as necessary;
- Conduct an initial investigation to retrieve all relevant facts related to the alleged discrimination or harassment. During this initial meeting, the Vice President for Student Services or designee will explain how the investigation will move forward.

The Vice President for Student Services or designee will evaluate the situation and determine if any additional remedies are needed.

Initial Meeting - Respondent

As soon as is practicable and after the initial meeting with the Complainant, the Vice President for Student Services or designee will contact the Respondent and schedule a meeting. At this meeting, the Vice President for Student Services or designee will, as applicable:

- Provide the Respondent details of the allegations being brought against him or her;

- Discuss with the Respondent, as applicable, any initial interim measures that were implemented as a result of the alleged discrimination or harassment;
- Work with Respondent to ensure that alleged actions of discrimination or harassment is immediately stopped and prevent future reoccurrence;
- Implement safety measures as necessary;
- Conduct an initial investigation to retrieve all relevant facts related to the alleged discrimination or harassment.

The Vice President for Student Services or designee will evaluate the situation and determine if any additional remedies are needed.

Employee Investigations:

Initial Meetings - Complainant

As soon as is practicable, the Executive Director, Human Resources or designee will contact the Complainant to schedule an initial meeting, and will proceed with an initial investigation to retrieve all relevant facts related to the alleged discrimination or harassment. During this initial meeting, the Executive Director, Human Resources or designee will explain how the investigation will move forward.

The Executive Director, Human Resources or designee will evaluate the situation and determine if any additional remedies are needed.

Initial Meeting - Respondent

As soon as is practicable and after the initial meeting with the Complainant, the Executive Director, Human Resources or designee will contact the alleged Respondent to schedule an initial meeting. At this initial meeting the following resources may be discussed as applicable:

- Provide the Respondent, in writing, the alleged allegations being brought against him or her.
- Conduct an initial investigation to retrieve all relevant facts related to the alleged discrimination or harassment. During this initial meeting, the Executive Director, Human Resources or designee will explain how the investigation will move forward.
- Discuss with the Respondent, as appropriate, possible interim measures that can be provided to the Respondent pending the results of the investigative and resolution processes.

The Executive Director, Human Resources or designee will evaluate the situation and determine if any additional remedies are needed.

Student/Employee Investigation Process

All student/employee investigations will be handled jointly by the Vice President for Student Services and by the Executive Director, Human Resources. The investigation process will be determined by the role (student or employee) of the Respondent. If the Respondent is a student, the College will utilize the student investigation process. If the Respondent is an employee, the College will utilize the employee investigation process.

Recommendations and Hearing

Students

After the investigation is complete, the Vice President for Student Services or designee will provide a recommendation letter to the Respondent which may include the following:

- Determination if the Respondent is responsible or not responsible for violating the Non-Discrimination or Harassment Policy.
- Sanction, if appropriate.
- Whether monitoring of academic schedules is needed between the parties to ensure that the individuals involved are not in classes together. The Vice President for Student Services or designee will assist in this process.
- Short-term College counseling services or training.

If the recommendation is accepted by the Respondent, the sanction(s) become effective immediately and the Respondent forgoes the option of a formal hearing.

If the recommendations of the Vice President for Student Services or designee are not accepted, the case will move to a formal hearing. The Vice President for Student Services or a designee will preside over the hearing. If the incident involves a College employee, the Executive Director, Human Resources or designee and the Vice President for Student Services shall preside jointly over the hearing (Presiding Officers). The process for the hearing is outlined below:

- Prior to the hearing, the Complainant and the Respondent have the right to review all relevant information, including written statements by the Respondent, the Complainant, or witnesses. Strict rules of evidence do not apply.
- Written notice including the date, time, and location of the hearing will be sent to all parties.
- At the hearing, all pertinent parties have a right to speak and be questioned by the Presiding Officers. Cross-examination between parties is not permitted. The College will provide options for questioning without confrontation. Each phase of the hearing will be heard by both parties in separate rooms by use of a speaker phone.
- The Complainant and the Respondent are allowed to be accompanied by an advocate. The advocate may not present on behalf of either party unless otherwise instructed to do so by the Presiding Officers. If the Complainant or the Respondent chooses to have an advocate who is an attorney, notification must be provided to either Presiding Officer at least three College business days prior to the hearing date. In this case, the College Attorney will also be present.
- Both parties will be notified of the hearing outcome.

Employees

The Human Resources representative will put forward a recommendation of finding and sanctions to both the Complainant and Respondent. If the recommendation is accepted by both parties involved, the recommendation and sanctions will become effective and both parties forgo the option of a formal hearing. A final outcome letter will be submitted to the Complainant and Respondent that may include, but not limited to, the following:

- Determination if the Respondent is responsible, not responsible, or if the decision is deemed inconclusive, or there is a finding of shared responsibility.
- Sanction, if appropriate.
- Monitoring of academic schedules or workplace schedules between the Complainant and the Respondent, if needed.
- Short-term counseling services will be offered to each party.

If the recommendations of the Human Resources representative are not accepted by either the Complainant or the Respondent, the case will move to a formal hearing. The Executive Director, Human Resources or designee will preside over the hearing as the Presiding Officer. The Human Resources representative presiding over the hearing will be different from the Human Resources representative who conducted the investigation.

If either party is a student, the Vice President for Student Services or designee and the Vice President for Human Resources or designee shall preside jointly over the hearing. The process for the hearing is outlined below:

- Prior to the hearing, the Complainant and the Respondent have the right to review all evidence, including written statements by the Respondent, the Complainant, or witnesses. Strict rules of evidence do not apply.
- Written notice including the date, time, and location of the hearing will be sent to all parties.
- At the hearing, all pertinent parties have a right to speak and be questioned by the Presiding Officers. Cross-examination between parties is not permitted. The College will provide options for questioning without confrontation; each phase of the hearing will be heard by both parties in separate rooms by use of a speaker phone.
- The Complainant and the Respondent are allowed to be accompanied by an advocate. The advocate may not present on behalf of either party unless otherwise instructed to do so by the Presiding Officers. If the Complainant or the Respondent chooses to have an advocate who is an attorney, notification must be provided to either Presiding Officer at least three College business days prior to the hearing date. In this case, the College Attorney will also be present.
- Both parties have a right to a written notice of the hearing outcome.

Sanctioning

The following sanctions may be imposed for those who have violated the Non-Discrimination and Harassment Policy:

Student Sanctions

- Verbal or Written Warning
- Probation
- Administrative withdrawal from a course without refund
- Required Counseling
- No Contact Directive
- Suspension
- Recommendation for Expulsion with automatic appeal to the President
- Other consequences deemed appropriate

Employee Sanctions

- Verbal or Written Warning
- Performance Improvement Plan

- Required Counseling
- Required Mediation
- Required Training or Education
- Recommendation of Demotion with automatic appeal to the President
- Recommendation to Suspend with or without Pay with automatic appeal to the President
- Recommendation for termination with automatic appeal to the President
- Other consequences deemed appropriate to the specific violation

Appeal Process:

The Complainant or Respondent has a right to a final appeal to the President:

- Each party has the right to appeal the outcome of the hearing to the College President.
- Upon receipt of the hearing decision, both parties have five (5) College business days to submit a notice requesting an appeal. For students, this notice must be submitted in writing to the Office of the Vice President for Student Services. For employees, this notice must be submitted in writing to the Office of the Executive Director, Human Resources.
- If an appeal is requested, both parties will be notified.
- The President will conduct a document review which does not include a new hearing but shall consist of evidence presented at the hearing along with a recording of the proceeding.
- The President will affirm, modify, or reject the decision and/or sanctioning. The President's decision will be final and notification of the decision will be sent directly from the President's office to each party.

Records Retention

Records Retention for Students and Employees

Students - All documentation will be stored in the Vice President for Student Services' office for a period of seven years at which point the documentation will be moved to an electronic version to be retained permanently.

Students - In cases where the Respondent is found responsible for violating the Non-Discrimination and Harassment Policy, this information will be considered as a disciplinary record with the College.

Employees – Personnel files are retained for 30 years. If the action taken is informal counseling, this does not become part of the permanent record.

Civil Rights files are maintained for a minimum of two (2) years.

Pursuant to Board Policy 111, this procedure must be followed when dealing with non-discrimination and harassment.

Definitions:

Complainant: A "Complainant" is an alleged victim of Discrimination and Harassment who chooses to file a complaint and participate in the College's investigation and resolution of an alleged Discrimination or Harassment.

Hostile Environment: A Hostile Environment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive and objectively offensive that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the Complainant) and an objective (reasonable person's) viewpoint.

The determination of whether an environment is "hostile" must be based on all of the circumstances. These circumstances could include:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- Whether the conduct was humiliating;
- Whether the conduct has an effect on the alleged victim's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct unreasonably interfered with the alleged victim's educational or work performance;
- Whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness; and
- Whether the speech or conduct deserves the protections of academic freedom or the First Amendment.

Personally Identifiable Information: Personally Identifiable Information as defined by FERPA includes, but is not limited to:

- A student's name;
- The name of the student's parent(s) or other family members;
- The address of a student or a student's family;
- A personal identifier, such as a student's social security number, student number, or biometric record;
- Other indirect identifiers, such as a student's date of birth, place of birth, or mother's maiden name;
- Other information that, alone or in combination, is linked or linkable to a specific student and that would allow a reasonable person in the College community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; and
- Information requested by a person whom the College reasonably believes knows the identity of the student to whom the education record relates.

Respondent: A "Respondent" is an individual who has been accused of committing Discrimination or Harassment by the reporting or filing of a complaint.

Retaliation: “Retaliation” means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a complaint of Discrimination or Harassment, including but not limited to direct and indirect intimidation, threats, and harassment.

Owners: Vice President for Student Services
Executive Director, Human Resources and Organizational Development

Date Effective: December 12, 2016