



Asheville-Buncombe Technical Community College

(A-B Tech) Procedure

Procedure 112.01: Sexual Misconduct

Introduction

Overview

This procedure applies to any allegation of Sexual Misconduct made by or against a student, a College employee or a third party. A-B Tech may take disciplinary action to address Sexual Misconduct and will take appropriate action to investigate and adjudicate the matter if it impacts the educational environment of the College. The College's disciplinary authority, however, may not extend to third parties who are not students or employees; or to incidents that occur outside of College or College sponsored events. This procedure applies regardless of the sexual orientation or gender identity of the parties involved.

All report of Sexual Misconduct will be reviewed by the Director of Title IX Compliance or designee to confirm that the alleged conduct can be addressed under this procedure. If it is determined that the alleged sexual misconduct complies with the standards set forth by Title IX, the complaint shall be addressed under the Title IX Sexual Harassment procedure (112.02).

Statements of Prohibition

Prohibition of Sexual Misconduct

The College prohibits Sexual Misconduct and is committed to a timely and fair resolution. The College encourages prompt reporting of all types of Sexual Misconduct. While the College will investigate all reports of Sexual Misconduct, some Sexual Misconduct can be addressed effectively without full adjudication and/or without formal disciplinary sanctions against a Respondent.

Prohibition of Retaliation

Retaliation against any person in connection with a complaint of Sexual Misconduct 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 Sexual Misconduct.

Prohibition of Student/Employee Relationships

Employee Relationships: Romantic or sexual relationships between College employees in a direct supervisor/supervisee relationship are prohibited. This prohibition shall continue as long as the employees remain in a direct supervisor/supervisee relationship or in the chain of supervision. Employees violating this provision will be subject to disciplinary action up to and including termination of employment.

Romantic or sexual relationships between College employees not in a supervisor/supervisee relationship that impairs the College employee's effectiveness, disrupts the workplace/learning environment, and/or impairs the public confidence in the College will be subject to disciplinary action up to and including termination of employment.

Employee/Student Relationships: Romantic or sexual relationships between College employees and students are prohibited if the employee and the student have an academic relationship; if the student is still enrolled in high school; or if the student is under the age of eighteen. Academic relationships include any activities in which the employee is a direct or indirect supervisor (i.e., student working in the program or department such as a work study/student worker or an employee serving as an advisor for a student club or organizational activity) or faculty and staff in an instructional setting for the student (i.e., classroom, lab, or clinical/practical setting). This prohibition shall continue until the student or the employee is no longer affiliated with the College. Employees engaging in inappropriate relationships will be subject to disciplinary action up to and including termination of employment.

Romantic or sexual relationships between College employees and students that do not violate the above provision but otherwise impairs the College employee's effectiveness, disrupts the workplace/learning environment, and/or impairs the public confidence in the College will be subject to disciplinary action up to and including termination of employment or expulsion from the College.

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 a Sexual Misconduct matter. College administrators will, however, share information regarding an alleged Sexual Misconduct, as appropriate and necessary, in order to address and resolve the allegation, prevent the recurrence of similar Sexual Misconduct and address the effects of the Sexual Misconduct.

All full-time and part-time regular employees and curriculum adjunct faculty members are considered Responsible Employees and have a duty to report to the Director of Title IX Compliance (for student matters) or the Vice President for Human Resources (for employee matters) unless the employee is an A-B Tech professional counselor.

Reporting Options

Reporting to Local Law Enforcement

Individuals may report Sexual Misconduct 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 (nor is a criminal investigation determinative of whether Sexual Misconduct, for purposes of this procedure, has occurred). 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 Sexual Misconduct 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 to College Officials

For incidents between students and employees, the Director of Title IX Compliance will work in partnership with the Vice President for Human Resources or designee to investigate and resolve the allegation.

Director of Title IX Compliance - A-B Tech's Director of Title IX Compliance oversees compliance with all aspects of the Sexual Misconduct policy. Anyone wishing to make a report relating to Sexual Misconduct may do so by reporting the concern to the College's Director of Title IX Compliance.

Michele Hathcock
Director of Title IX Compliance
Office of the Vice President for Student Services
Asheville Campus
828-398-7932
michelechathcock@abtech.edu

Online reporting:

[To submit an online report, please visit www.abtech.edu/incidentreport](http://www.abtech.edu/incidentreport)

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

Shanna Chambers
Vice President, Human Resources
Asheville Campus
828-398-7178
shannarchambers@abtech.edu

A-B Tech Police - The A-B Tech Police Department is located across from the parking deck in the Mission Health/A-B Tech Conference Center on the main Asheville campus and can be reached by phone at (828) 398-7125. A-B Tech Police Officers are available 24-hours a day, 7-days a week. To reach the on-duty officer, please 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 since supporting information may be limited. Anonymous reports may be used for statistical reporting purposes.

Reporting Timeframe

An allegation of Sexual Misconduct may be filed at any time, regardless of the length of time between the alleged Sexual Misconduct and the decision to file the complaint. The College strongly encourages individuals to file complaints promptly in order to preserve evidence for potential disciplinary or legal proceedings. A delay in filing a complaint may hinder the College's investigation.

Limited Immunity

The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interest of this College that as many Complainants as possible choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, the College offers Sexual Misconduct Complainants and witnesses amnesty from minor policy violations.

State and Federal Reporting Obligations

A-B Tech follows all state laws regarding mandatory reporting of child abuse to appropriate state officials. Additionally, Campus Security Authorities have a duty to report sexual assault, domestic violence, dating violence and stalking to the Director of Title IX Compliance for federal statistical reporting purposes (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 (using Clery location categories) and the Clery crime category. This reporting protects the identity of the Complainant and may be done anonymously. The 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, you may go to the College website under Consumer Information.

Investigation Process

Standard of Evidence

The College uses the preponderance of the evidence as the standard for proof of whether a violation occurred. In the student hearing and employee grievance process, legal terms like "guilt," "innocence" and "burden of proof" are not applicable. Student and employee hearings are conducted to take into account the totality of all evidence available from all relevant sources. The College will find the Respondent either "responsible" or "not responsible" for violating this procedure.

Advocates

The Complainant and the Respondent are allowed to be accompanied by an advocate. The role of the advocate is to provide support solely to the Complainant or Respondent and not to speak on behalf of either party unless invited to do so by the Presiding Officer. If the Complainant or the Respondent chooses to have an advocate, the name must be provided as well as the role/relationship of the advocate to the Presiding Officer at least three College business days prior to the initial meeting or hearing date.

Interim Measure

If at any point the Vice President for Student Services, Director of Title IX Compliance, or designee deems it necessary to implement interim measures for the protection of any member of the College community, actions may be taken including but not limited to the following:

- Temporarily suspend the Respondent for up to ten College business days and move the matter to a hearing;
- 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 President may take the following actions including but not limited to:

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

Interim measures shall only be used when necessary to protect health and safety and, when interim measures are implemented, every effort will be made to expedite the process.

Determination of Investigator and Resolution Process

This procedure applies to students and employees as either the Complainant or the Respondent. The administrator receiving the incident report will determine if the case should be handled by the Director of Title IX Compliance (student/student cases) or the Human Resources representative (employee/employee cases). For incidents involving students and employees, the College will utilize the process for both the student investigation and the employee investigation sections as applicable.

Investigations

When an individual brings forward an allegation of Sexual Misconduct, the individual is referred to as the Complainant. The individual named in the allegation is referred to as the Respondent. The investigation will follow the process below.

Administrative Conference

Complainants

As soon as is practical, the Director of Title IX Compliance or designee will contact the Complainant to schedule an administrative conference. During these initial meetings, the Director of Title IX Compliance will:

- Work with Complainant 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 Sexual Misconduct. During this initial meeting, the Director of Title IX Compliance or designee will explain how the investigation will move forward.

Respondents

Prior to the administrative conference with the Respondent, the Director of Title IX Compliance or designee will notify the Respondent of the allegations. As soon as is practical and after the administrative conference with the Complainant, the Director of Title IX Compliance or designee will contact the alleged Respondent to schedule a meeting. At this meeting, the Director of Title IX Compliance will, as applicable:

- Discuss with any initial interim measures that were implemented as a result of the alleged Sexual Misconduct.
- Work with Respondent to ensure that alleged actions of Sexual Misconduct are immediately stopped and prevent future reoccurrence.
- Conduct an initial investigation to retrieve all relevant facts related to the alleged Sexual Misconduct. During this initial meeting, the Director of Title IX Compliance or designee will explain how the investigation will move forward.

Recommendations and Hearing

After the investigation is complete, the Director of Title IX Compliance or designee will put forward a recommendation of finding and sanction(s) to both the Complainant and Respondent. The Director of Title IX Compliance or designee may also include possible violations of other College policies that contributed to, arose from, or are otherwise related to alleged violations of this policy and procedure in the scope of an investigation.

If the recommendation is accepted by both parties involved, the recommendation and sanction(s) will become effective and both parties forgo the option of a formal hearing. The Director of Title IX Compliance or designee will submit to each party a final outcome letter that will include, but not limited to, the following:

- Determination if the Respondent is responsible, not responsible, or if the decision is deemed inconclusive, or shared responsibly for violating this or other applicable College policies.
- Sanction, if appropriate.
- Monitoring of academic schedules or work-place schedule as needed
- Short-term College counseling services available to each party.

If the recommendations of the Director of Title IX Compliance or designee are not accepted by either the Complainant or the Respondent, the case will move to a formal hearing. The Vice President for Student Services or a designee will preside over the hearing as the Presiding Officer. If either party is an employee, the Vice President for Human Resources, and the Vice President for Student Services 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.
- Written notice including the date, time, and location of the hearing will be sent to all parties. If the respondent is not able to attend, reasonable modifications to the date will be made. However, if the respondent does not show for the scheduled hearing, the hearing will proceed as planned utilizing the evidence available.

- At the hearing, all pertinent parties have a right to speak and be questioned by the Presiding Officer. Cross-examination takes place in a modified format. Each party has the right to pose questions to the other party through the Presiding Officer. Each phase of the hearing will be heard by both parties in separate rooms by use of a speaker phone or through the use of virtual meeting software.
- The Complainant and the Respondent are allowed to be accompanied by an advocate. The role of the advocate is to provide support to the Complainant or Respondent and not to speak on behalf of either party unless invited to do so by the Presiding Officer. If the Complainant or the Respondent chooses to have an advocate, the name must be provided as well as the role of the advocate to the Presiding Officer at least three College business days prior to the hearing date.
- 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 Sexual Misconduct Policy or other applicable College policies:

Student Sanctions:

- Verbal or Written Warning
- Probation
- Administrative withdrawal from an Academic Program or course without refund
- Required Counseling
- No Contact Directive
- Suspension from the College without refund
- 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 Training or Education
- Recommendation of Demotion (Automatic appeal to the President)
- Recommendation to Suspend with or without Pay (Automatic appeal to the President)
- Recommendation for termination (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:

- a. Upon receipt of the hearing outcome, both parties have five 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 Vice President for Human Resources.
- b. If an appeal is requested, both parties will be notified.
- c. 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.
- d. The President will affirm, modify, or overturn 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

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. In cases where the Respondent is found responsible for violating the Sexual Misconduct 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 must be maintained for a minimum of two years.

Pursuant to Board Policy 112, this procedure must be followed when dealing with sexual misconduct.

Definitions:

Administrative Conference: A individual meeting with the Complainant or Respondent and the Director of Title IX Compliance or the Vice President for Human Resources or designees to discuss and attempt to resolve the issue.

Advocate: A support person that may accompany the Complainant or Respondent to meetings, conferences or hearings. The advocate can be a friend, family member, attorney, counselor, or any other person the Complainant or Respondent selects.

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

Employee: An individual who is hired to provide services on behalf of the College on a regular or time limited basis in exchange for compensation and who does not provide these services as an independent contractor, as defined by the Internal Revenue Service.

Expulsion: Completely withdraw from the College. Does not typically allow for re-enrollment.

Preponderance of Evidence: "Preponderance of the Evidence" is the standard for proof the College uses to determine whether a violation occurred. Preponderance of evidence means that a party has shown that its version of facts, causes, damages, or fault is *more likely than not* the correct version.

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

Retaliation: 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 Sexual Misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.

Sexual Misconduct: Any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without consent. 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 also includes complicity in Sexual Misconduct

Student: An individual who is currently enrolled in a curriculum or continuing education class.

Suspension: Complete withdraw from the College with option for future re-enrollment after a specified period.

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

Date Effective: December 12, 2016