

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. 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 complaint resolution options to its students, applicants, and employees who are alleged victims.

When a sexual misconduct complaint falls outside the jurisdiction of Title IX, the College will apply its student conduct procedures (See Policy 5.3.2 – Student Code of Conduct and Policy 5.3.6 – Student Grievance) or employee grievance procedures (Policy 3.3.8 – Grievance Policy and Procedure - Non-Student) as appropriate to the particular complaint.

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.

## I. DEFINITIONS AND PROHIBITED CONDUCT

Prohibited conduct under Title IX includes the following:

- **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.
- **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).
- **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.

### **Definitions**

Sexual harassment is a specific form of discriminatory harassment and an unlawful discriminatory practice. Sexual harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, dating violence, domestic violence, and stalking, all of which are defined below. For the purposes of this policy, sexual harassment is defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College’s education programs or activities. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

The complainant is an individual who is the reported victim of conduct that could constitute sexual misconduct. The respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct.

Sexual assault is any sexual act directed against another person, without the consent of the complainant, including instances in which the complainant is incapable of giving consent. This includes:

- Forcible rape, which is defined as penetration, no matter how slight, of the vagina or anus with a body part or object, or oral penetration by a sex organ or other person, without the consent of the complainant.

- Forcible sodomy, which defined as oral or anal sexual intercourse with another person, forcibly, and against that person's will (non-consensually), or not forcibly against that person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Sexual assault with an object, which is defined as the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Forcible fondling, which is defined as the touching of the private body parts of another person for the purposes of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly against that person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Incest, which is defined as non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by North Carolina law.
- Statutory rape, which is defined as non-forcible sexual intercourse with a person who is under the statutory age of consent of North Carolina.

Dating Violence is defined as violence, on the basis of sex, committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence is defined as violence, on the basis of sex, committed by a current or former spouse or intimate partner of the complainant by:

- A person with whom the complainant shares a child in common, or
- A person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner, or

- A person similarly situated to a spouse of the complainant under the domestic or family violence laws of North Carolina, or
- Any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.

To categorize an incident as domestic violence, the relationship between the respondent and the complainant must be more than two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Stalking is defined as engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for his or her safety, or the safety of others, or suffer substantial emotional distress. For the purposes of this definition:

- "Course of conduct" means two or more acts, including but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the complainant.
- "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

Consent is an agreement between participants to engage in sexual activity. It is defined as voluntary, freely given, informed, positive and cooperative in act and attitude, revocable at any time, and ongoing throughout a sexual encounter. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or marital relationship shall not be sufficient to constitute consent. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Persons who are related to each other within the degrees wherein marriage is prohibited by law cannot consent to sexual intercourse with each other. Consent may not be assumed. If there is any ambiguity or confusion, a person involved should stop the activity to clarify and confirm consent. Once consent is withdrawn, the sexual activity must stop immediately.

Consent is not freely given if:

- It is obtained through the use of force, through the fear or threat of force, intimidation, coercion, or by kidnap;

- The individual has acted or spoken in a manner which expresses they refuse to give consent; or
- The complainant was unable to give consent for any of the following reasons:
  - The individual is unable to make an informed decision due to incapacitation,
  - The individual is unconscious, asleep, or suffering from shock,
  - The individual is under the statutory age of consent, or
  - The individual has a permanent or temporary mental disorder or development or physical disability, and therefore is legally unable to give consent.

For the purposes of this definition:

- “Coercion” is the practice of forcing another party to act in an involuntary manner by use of intimidation or threats or some other form of undue pressure or force. Coercion may include the use of emotional manipulation to persuade someone to do something the person does not want to do.
- “Incapacitation” is the state where someone cannot make rational, reasonable decisions due to a lack of capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, and how” of the sexual interaction) due to alcohol, prescribed medication, predatory drugs, or other drugs.

### **Bystander Interventions and Risk Reduction**

Every member of the ACC community can play a role in facilitating safe and positive preventative measures. The entire college community is encouraged to be an active bystander. It is important to note that if someone is assaulted, it is never their fault; however, bystanders can use the three options provided below to intervene to prevent harm or potential harm:

- **Direct:** Approach the situation directly. Say, “What’s going on?” or “Where are you going?”
- **Delegate:** Contact the Department of Public Safety or find a friend to intervene
- **Distract:** Do something to take attention away from the situation. Say, “The police are coming,” or do something to distract.

In addition to bystander interventions, risk reduction strategies include the following:

- Get clear, unambiguous consent for every aspect of sexual activity.
- If someone says no or looks uncomfortable, stop what is happening.

- Communicate boundaries and expectations.
- Have backup plans. Sometimes plans change quickly. Download a ride share app, like Uber, or keep the number for a reliable cab company on hand.
- When alcohol is involved:
  - Whenever going out in a group, plan to arrive together and leave together and if necessary communicate early departures to the group.
  - Know what is being served. Don't recognize an ingredient? Look it up. Be wary of large-batch drinks like punches that may have deceptively high alcohol content
  - Don't leave a drink unattended.
  - Don't accept drinks from strangers or acquaintances.
  - Be aware of sudden physical changes that could signal inebriation.

## **II. REPORTING OPTIONS**

Any person may report sexual misconduct (harassment or violence) to one or more of the following: the Title IX Coordinator (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. 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.

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.

### **Responsible Employees**

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/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.

### **Counselors/Advisors**

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 Wellness & Student Support, Coordinator of Accessibility 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 Experience, 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).

### **Supportive Measures**

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. The measures must be non-punitive, non-disciplinary, and not unreasonably burdensome to the accused party.

Supportive measures are available to both complainants and respondents before or after the filing of a formal complaint, or where no formal complaint has been filed. The College will maintain as confidential any supportive measures provided to the parties, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The College is obligated to comply with a student’s reasonable request for an academic situation following an alleged sex offense.

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroups
- Altering work arrangements for employees or student-employees

- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Academic support, extensions of deadlines, or other course or academic program-related adjustments
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased campus police and security to monitor certain areas of campus
- Any other actions deemed appropriate by the Title IX Coordinator

No-Contact Orders may be imposed at the request of a party or at the discretion of the Title IX Coordinator. When a No-Contact Order is put in place, the party or parties must refrain from:

- Approaching one another at any time
- Calling one another at any time
- Communicating electronically (email, social media, text message, etc.)
- Other forms outlined in the No Contact Order that may be required specific to the terms of the case

### **Written Notification of Rights and Services**

When a student or employee reports he or she has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether on or off campus, the College will provide written notification to the student or employee about his/her rights and options both within the institution and the community. This written notification is titled “Written Notification of Rights and Options.”

The College will provide written notification to victims about options for, available assistance in, and how to request changes to academic, transportation, and working situations or protective measures.

### **Time Limits and Response Timeline**

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. The complainant and respondent will be notified in writing of extensions and delays.

### **III. 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, and 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.

### **IV. 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.

## **V. 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.

## **VI. FORMAL RESOLUTION OPTIONS**

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 respondent is student) or to the employee grievance procedure policy (if the respondent 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.

The complainant has the right to pursue the applicable following options:

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. 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.

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.

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.

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

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

## **VII. 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 non-Title IX 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.

If the alleged victim is deceased as a result of such crime or offense, the next of kin of the victim shall be treated as the alleged victim for purposes of disclosure.

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

## VIII. TRAINING AND AWARENESS

The College expects all employees and students to participate in ongoing training and awareness campaigns focused on defining, addressing, and preventing sexual misconduct. Training topics and content provided by the College will be consistent with Title IX and Campus SaVE Act regulations and recommendations.

Prevention and awareness campaigns for new employees and new students include information shared at new employee orientation and new student orientation. The following topics are included in this training and awareness programming:

- Statement that the College prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking, as defined by the Clery Act.
- Definitions of dating violence, domestic violence, sexual assault, stalking, and consent under Title IX.
- Description of safe and positive options for bystander interventions.
- Information on risk reduction.

- Description of the College’s disciplinary proceedings for incidents of dating violence, domestic violence, sexual assault, and stalking.

Those who conduct Title IX training will receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of complainants and respondents and promotes accountability.

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. Employees responsible for conducting Title IX hearings will receive training that addresses, but is not limited to, relevant evidence and how it should be used during a proceeding, proper techniques for questioning witnesses, basic procedural rules for conducting a proceeding, and avoiding actual and perceived conflicts of interest.

ACC’s sexual misconduct policy and procedures will be published in key College publications (e.g., General Catalog, Student Handbook, Policy and Procedures Manual) and made widely available to members of the College community.

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