

# **SEXUAL MISCONDUCT, DISCRIMINATION, HARASSMENT, AND VIOLENCE POLICY**

## **BCC POLICY NUMBER 1.02**

**SOURCE, REFERENCE: FULL LISTING AT END OF POLICY,**

**REVISION RESPONSIBILITY: EXECUTIVE VICE PRESIDENT**

### **COMMENTS:**

#### **POLICY:**

Bladen Community College (BCC) is committed to providing and promoting an atmosphere in which faculty and staff may work and students can fully reap the benefits of education and training, free from sexual misconduct, including sexual discrimination, harassment and violence. Accordingly, it is the policy of Bladen Community College to prohibit all forms of sexual discrimination, and to foster a campus environment which empowers individuals to bring forth claims of sexual discrimination without fear of retaliation. No form of sexual discrimination will be tolerated, whether it arises in the workplace or in some manner which impedes the ability of students, employees, and other members of the college community to access any services offered by the college. The college places a special emphasis on providing training designed to help faculty, staff, and students recognize, report, intervene, and resolve sexual discrimination based on sex or gender identity, including sexual harassment, sexual violence, sexual assault, stalking, domestic violence, dating violence, or other forms of violence.

Bladen Community College faculty, staff, students, and visitors to the college are encouraged to bring forth claims of sexual misconduct without fear of retaliation. It is a violation of this policy for any faculty, staff, student, or visitor to retaliate against individuals bringing forth such claims of an allegation of misconduct. The college will promptly, fairly and impartially investigate claims of sexual misconduct in its several forms made by members of the college community, including employees, students, contractors, volunteers and visitors to campus. It is also a violation of this policy to knowingly make malicious, frivolous or false claims or statements regarding sexual misconduct or discrimination which, if substantiated, may result in disciplinary action against the instigator.

All members of the campus community are expected and instructed to conduct themselves in manor and behavior so as to contribute to an atmosphere free of sexual discrimination, including sexual harassment or sexual violence. Sexual misconduct against an employee by another employee or student, or of a student by another student or employee is a violation of this college policy and will not be tolerated. The college will provide to members of the college community appropriate processes and accommodations in order to minimize a hostile environment, prevent the recurrence of incidents of sexual harassment, discrimination or sexual violence, and address its effects.

## **DEFINITIONS:**

The following definitions apply:

- Hostile Environment is defined as unwelcomed conduct which is severe or pervasive enough to create a work or educational environment that a reasonable person would consider intimidating, hostile, or abusive when such conduct is unwelcomed. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets, name calling, unwanted touching, physical assaults, threats, intimidation, ridicule, mockery, insults, offensive objects or pictures, or interference with work or education. Petty slights, annoyances, or environments created by something other than illegal discrimination shall not rise to the level of a hostile environment.
- Preponderance of the Evidence is defined as a finding that a claim or allegation is more likely than not to be true. This term does not refer to the quantity of evidence but rather to the quality of the evidence. It means that the fact finder must be persuaded, considering all the evidence, that the necessary facts to establish the allegation are more likely than not to exist.
- Sex or Gender Discrimination: Conduct which is severe, pervasive, and objectively offensive so as to exclude a person from participation in or the denial of persons from the benefits of any college employment, education program, or activity based upon their sex or gender shall be a prohibited form of discrimination.

Without limiting the definition of Sex or Gender Discrimination, the following are defined as acts of Sexual Misconduct:

- Sexual Harassment: A deliberate, unsolicited and unwelcomed sexual advance, request for sexual favors, and other unwelcomed verbal or physical conduct of a sexual nature by an employee or student, when:
  - Submission or rejection of such conduct is made explicitly or implicitly a term or condition of an individual's employment, academic standing, instruction or education,
  - Submission to or rejection of such conduct by an individual is used as the basis for evaluation in making employment or academic decisions affecting the individual; and/or,
  - Such conduct is sufficiently severe and pervasive to a reasonable person that it interferes with an individual's employment, academic performance, or living conditions by creating an intimidating, hostile or demeaning environment.

- **Sexual Violence:** Refers to a type of sex or gender discrimination involving physical sexual acts perpetrated against a person's will; or, where a person is incapable of giving consent (due to the employee or student's use of drugs or alcohol, or because an intellectual or other disability, or a medically diagnosed impairment prevents the person from having the capacity to give consent). A number of different acts, as defined below fall into the category of sexual violence including: dating violence, domestic violence, rape, sexual assault, sexual battery, sexual coercion, and stalking. Perpetrators of sexual violence can be college employees, other students, or third parties. All such acts of sexual violence are forms of sex or gender discrimination prohibited by Title IX of the Higher Education Act, North Carolina General Statutes 14-27.1 and 50B-1, the board of trustees, college administration.
- **Dating Violence** is defined as violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.
- **Domestic Violence** is defined as asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former co-inhabitant, persons similarly situated under a domestic or family violence law, or anyone else protected under the North Carolina Domestic Violence Act.
- **Rape** is defined as non-consensual sexual intercourse, however slight, with any object, by one person upon another person that is without consent, which may be accompanied by the threat or use of physical force, or behavior that is designed to induce fear in another person.
- **Sexual Assault** is defined as any involuntary sexual act in which persons are threatened, coerced, or forced to engage against their will. Sexual assault includes all forms of rape, attempted rape and nonconsensual sexual physical contact.
- **Sexual Battery** is defined as an unwanted form of contact with an intimate part of the body that is made for purposes of sexual arousal, sexual gratification, or sexual abuse. Sexual battery may occur whether the victim is clothed or not.
- **Sexual Coercion** is defined as any act of persuading or coercing a person into engaging in an unwanted sexual activity through physical force, the threat of physical force, or emotional manipulation. It may also include substance coercion. Coercion exists when a sexual initiator engages in a sexually pressuring actor oppressive behavior that causes another person to submit to otherwise unwanted activity.

- Stalking is defined as a course of conduct directed at a specific person that would cause a reasonable person to fear for her/his or other's safety, or to suffer substantial emotional distress. [See section 14-277.3A of the General Statutes for North Carolina's definition of stalking].

Consent - Effective consent is the basis of the analysis applied to unwelcome sexual contact. Lack of consent is the critical factor in any incident of sexual misconduct. The following items are conditions of consent:

1. Consent must be received prior to engaging in sexual activity and shall be defined as affirmative action through clear words or actions that create the mutual understandable permission of all parties to willingly engage in sexual activity and the conditions of such activity.
2. Consent can only be given by one who has the mental and physical capacity to make such a decision, and it must be clear, knowing, and voluntary.
3. Consent to engage in one form of sexual activity cannot automatically imply consent to engage in any other form of sexual activity.
4. Previous relationships or prior consent cannot imply consent to future sex acts. Consent can be withdrawn at any time.
5. Consent may not be granted by a person known to be, or by one who should be known to be, mentally or physically incapacitated.
6. It should be recognized that the lack of protest or resistance is not, in and of itself, consent and persons who are asleep, unconscious, or unable to communicate due to a mental or physical condition are not capable of granting consent.

### **APPLICATION OF POLICY:**

The Sexual Misconduct, Discrimination, Harassment and Violence policy, which prohibits illegal sexual activity, shall apply to all college community members, including faculty, staff, students, potential students, volunteers, vendors, independent contractors, and visitors when the alleged activities giving rise to illegal discrimination occur:

- On any campus or property controlled by the college
- During any college program or activity, including those programs or activities which occur on property owned or controlled by the college; and,
- Off-campus and the effects of the conduct could have an adverse effect on the college, its faculty, staff, employees, sub-contractors, vendors, visitors;
- And additionally, in incidents when both the complainant and alleged violator are identified in one of the above roles, these procedures apply regardless of the location of the incident giving rise to the complaint,
- Off-campus conduct that is likely to have a substantial adverse effect on, or pose a threat to, or cause a detriment in the work and learning environment is a violation of the policy and will be investigated for appropriate corrective action(s).

## **RESPONSIBLE EMPLOYEES:**

All members of the faculty and staff, including work-study students of the college shall be required to notify their immediate supervisor and the Title IX coordinator of any illegal sexual discrimination of which they become aware, including, but not limited to, sexual harassment and sexual violence as defined above. Reasonable efforts shall be made to notify all faculty and staff, including work-study students of this obligation. Failure to fulfill this obligation shall result in disciplinary action.

## **PROCEDURE:**

The administration of the college establishes the following procedures to implement in the application of this policy.

In the event an allegation of sexual discrimination is made, BCC shall:

- Inform the alleged victim of the options which may be available to him/her; and offer assistance;
- Maintain confidentiality to the fullest extent permitted by law;
- Thoroughly and impartially investigate the allegation;
- When reasonably necessary, provide interim remedy(ies) pending a final resolution;
- Provide all parties involved in the allegation a prompt and equitable determination of the merits of the claim;
- Decide whether the allegations are more likely than not to have occurred by applying the preponderance of the evidence standard; and,
- If the allegations are substantiated, resolve the allegations in a manner designed to end the discrimination, prevent its recurrence, remedy the effects upon the victim and the community, and impose sanctions on any party found to have engaged in behavior prohibited by this policy.

## **FILING A COMPLAINT:**

Complaints of sexual misconduct in violation of the non-discrimination policy should be made to one or more of the following people: the designated college Title IX coordinator, a counselor, advisor, supervisor, law enforcement official, or responsible college employee. Responsible college employees are all faculty members, administrators, student services staff members, and campus security. Those wishing to report a violation under the non-discrimination policy are strongly encouraged, but not required, to do so.

## **COMPLAINT INQUIRY OR INVESTIGATION STEPS:**

An individual who believes to have been subjected to illegal discrimination, including sexual harassment, sexual assault, or sexual violence, is encouraged to report the incident to the Title IX coordinator, or a responsible college employee. The complainant, as well as the alleged offender, must freely, openly, and honestly confer with and/or investigators and cooperate with college efforts to determine the facts and circumstances leading to the complaint, to enable the Title IX coordinator and investigators to make a reasonable determination as to the merits of the complaint, and to reach, if possible, an informal resolution. If an informal resolution cannot be reached, the Title IX coordinator will conduct a formal inquiry or investigation.

## **INVESTIGATING REPORTS:**

The college will investigate all possible violations of the Sexual Misconduct, Discrimination, Harassment and Violence policy that the college has knowledge of, regardless whether a complaint alleging a violation of the policy has been filed and regardless of whether the conduct at issue actually occurred. An anonymous report of sexual misconduct is not considered a complaint under this policy; however, the College will attempt to perform an inquiry as to any report received. A third party complaint, made on behalf of someone who has been a victim of sexual misconduct, discrimination, harassment or violence, will be investigated by BCC. Once the Title IX coordinator has received a report of discrimination or sexual harassment/violence, the Title IX coordinator will conduct an investigation with any other college official deemed appropriate under the circumstances, including law enforcement.

The college will strive to complete all investigations within sixty (60) days of the filing of a complaint or the date on which the college becomes aware of a suspected violation of the policy, unless the college notifies the parties that additional time is needed to complete the investigation.

An investigation by the Title IX coordinator typically includes interviews of the complainant, the accused, and any witnesses and other persons who are identified as possibly having some information related to the alleged incidents, and a review of relevant documentation and other evidence.

Any pending criminal investigation or criminal proceeding may have some impact on the timing of the college's investigation, but the college will conduct its own investigation as soon as practicable under the circumstances. The college reserves the right to conduct its own investigation prior to the completion of any criminal investigation or criminal proceeding.

At the conclusion of the college's investigation, the Title IX coordinator will prepare a written report summarizing the outcome of the investigation and will communicate the outcome to the complainant and the accused.

**MISCELLANEOUS INFORMATION:** In compliance with Title IX requirements, the following additional information is provided related to filing of complaints:

- The college shall retain jurisdiction over Title IX complaints and subsequent inquiries and/or investigations. The evidentiary standard used during inquiries or investigations following a complaint shall be “preponderance of the evidence.”
- Victims may file confidential reports. In general, the college will obtain consent from the complainant before beginning an investigation. However, in cases involving potential criminal conduct college officials reserve the authority to determine, consistent with state and local law, whether local law enforcement authorities should be notified. If the complainant requests confidentiality or asks that the complaint not be pursued, the college will take reasonable steps to honor the complainant's request. The college will inform the complainant that its ability to comply may be limited. The Title IX coordinator will evaluate the complainant's request in the context of maintaining a safe campus environment, and inform the complainant prior to starting an investigation whether the college can maintain confidentiality. At a minimum, in every case of reported sexual violence, a report must be made by the Title IX coordinator to campus security staff in order to comply with Clery Act requirements. In situations where absolute confidentiality cannot be maintained to ensure due process of all parties of the complaint, each person given access to the information will be informed that retaliation is prohibited under Title IX.
- Those filing complaints under this procedure may also file a criminal complaint and a Title IX complaint simultaneously (at the discretion of the person making the complaint). Alleged victims shall be notified of this right at the time of the initial discussion and filing of the allegation/complaint.
- Interim measures approved by the Title IX coordinator may be taken to protect the person making the complaint and the person(s) against whom the complaint was made, including such actions as referrals to appropriate agencies which can provide support, counseling, victim counseling, performance improvement plans, changing course and/or work schedules of one or more of the parties to the complaint.
- Final remedies and/or sanctions include but are not limited to: referrals to counseling, advocacy, and support agencies, security escorts while on college property, formal performance improvement plans, probation with or without pay, immediate mandatory separation of the parties to the complaint, changing of course/work schedules, temporary or permanent suspension, termination, or expulsions of those where the preponderance of the evidence indicates misconduct has likely occurred.

## **GRIEVANCE PROCEDURES AND APPEALS FOR STUDENTS AND EMPLOYEES:**

The college encourages the prompt and fair settlement of grievances. Any student or employee may present a grievance without the fear of coercion, restraint, interference, penalty, reprisal, or retaliation. The purpose of the grievance policy and procedure, as it pertains to sexual discrimination, is to provide a system to resolve complaints against faculty, staff, and students. Only allegations of sexual discrimination, sexual harassment or sexual violence will be considered under this policy and procedure.

Complaints alleging illegal discrimination and including sexual harassment, violence, assault or stalking complaints will be directed to the Title IX coordinator. If the alleged harasser is the Title IX coordinator or members of his/her staff, the complaint will be directed to the college's executive vice president who will conduct the inquiry or investigation following the procedures outlined in this policy.

**APPEALS:** Decisions resulting from any complaint investigation shall be made using the "preponderance of the evidence" standard using these following steps:

**Step 1:** Should a party wish to appeal the formal decision of the Title IX coordinator, either party may prepare and submit a written appeal to the appropriate vice president requesting reconsideration of the previous decision. The appeal/reconsideration of decision request must be presented in writing within ten (10) working days after receipt of the Step 1 decision. The appropriate vice president will render an appeal decision based on their reconsideration of the information and further inquiry into the matter within ten (10) working days following the initial receipt of such appeal/reconsideration.

**Step 2:** If either party is dissatisfied with the vice president's resolution decision, he/she may submit a written appeal, within ten (10) days of their notification of the decision. The appeal should be addressed to the college president requesting reconsideration of both the Title IX coordinator's recommendations and the decision(s) of the vice president's finding(s). The president may consider the evidence gathered during the previous inquiries and/or investigations, the Title IX coordinator's recommendations, the decision(s) of the vice president, and any other relevant evidence. The appellant may be asked to appear and present additional testimony or evidence in person to the president. Should the president seek additional information from any party, all parties shall have a right to provide oral testimony. The president will render a final decision on the matter within ten (10) days of receipt of the appeal. No additional administrative remedy shall be granted after the president makes a decision.

References:

- Title VI and VII of the Civil Rights Act of 1964 and 1991
- Title IX of the Education Amendments of 1972
- Cleary Act
- Violence Against Women Act
- Sections 799A and 845 of the Public Health Service Act
- Equal Pay Act of 1963
- Age Discrimination Act of 1967 and later amendments
- Vocational and Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- Family Medical Leave Act of 1993
- Executive Orders 11246 and 11375

Approved by the Board of Trustees – 07/01/2007

Reapproved by the Board of Trustees – 08/28/2012, 03/24/2015, 12/06/16, 11/28/2017, effective 01/01/2018