

2-26 Unlawful Harassment Policy and Procedures (23NCAC02C.0210)

It is the policy of College of The Albemarle to maintain a learning and working environment that is free from unlawful discrimination and harassment. This policy applies to all employees, visitors and students. Unlawful harassment has no place in the college environment and will not be tolerated in any form based on “protected characteristics” defined as follows: race, color, sex (including pregnancy), national origin, disability, religion, or other characteristic that is protected by law.

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful and a violation where (1) enduring the offensive conduct becomes a condition of continued employment or academic evaluation (grades), or (2) the conduct is severe or pervasive enough to create a work or academic environment that a reasonable person would consider intimidating, hostile, or abusive. Antidiscrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Examples of unlawful “harassment” include, but are not limited to, bullying, legally obscene language, jokes, vandalism, pranks, epithets, slurs, name-calling, ridicule, mockery, or other unwelcome physical, verbal or written conduct including the transmission of materials of a sexual nature¹ through electronic and digital media.

The offensiveness of a particular expression, standing alone, is not sufficient basis to establish harassment. To be in violation of this policy, the harassment must include something beyond the expression of views, words, symbols, or thoughts that some person finds offensive.

- a. For a student, the harassment must be sufficiently serious (i.e. severe, persistent or pervasive) as to limit or deny a student’s ability to participate in or benefit from an educational program
- b. For an employee, harassment becomes unlawful where (1) enduring the offensive conduct becomes a condition of continued employment, or (2) the

¹ Policy 2-37 Sexual Misconduct (Title IX) will apply to harassment based on gender, gender expression, pregnancy or sexual orientation.

conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

The cited examples are only examples, and do not reflect an inclusive list of potential policy violations.

The college will make diligent efforts to correct, prohibit or remedy the harassment, and to protect the employee and student from further harassment. Retaliation against an employee or student who reports improper conduct in good faith is strictly prohibited. Visitors who violate this policy shall be required to leave college property immediately. Violations by vendors shall be considered a breach of contract.

A specific form of unlawful harassment is sexual harassment also known as sexual misconduct. Sexual misconduct (sexual harassment) includes, but is not limited to, physical assault or other unwelcome touching; suggestions or demands for unlawful involvement in intimate relationships accompanied by implied or overt promises of preferential treatment or threats; pressure for sexual activity; continued or repeated offensive flirtations, advances or propositions; or the display of sexually suggestive objects or pictures. Also included is any pattern of conduct that would discomfort or humiliate, or both, a reasonable person at whom the conduct was directed that includes one or more of the following: (1) unnecessary touching, patting, hugging, or brushing against a person's body; (2) remarks of a sexual nature about a person's clothing or body, whether or not intended to be complimentary; (3) remarks about sexual activity or speculations about previous sexual experience; or (4) other comments of a sexual nature, including sexually explicit statements, questions, jokes or anecdotes.

Title IX of the Education Amendments of 1972 prohibits sex (gender-based) discrimination and harassment in educational programs and activities at institutions that receive federal financial funding. See Policy 2-37, Sexual Misconduct.

Consensual Relationships

Consensual relationships are not absolutely prohibited by the Unlawful Harassment Policy and Procedures; however, consenting romantic or sexual relationships have the potential to lead to complaints of sexual harassment or sexual misconduct under this policy. The college's educational mission promotes professionalism among employees and students. Professionalism is fostered by an atmosphere of trust and respect. Whenever the influence of power exists between an employee and a student or between two employees and a romantic

or sexual relationship develops, there is the potential for abuse of power, even in relationships of apparent mutual consent. Such relationships tend to undermine professionalism; adversely affect the fulfillment of the college's educational mission; create, or appear to create, conflicts of interest; and are not in the best interest of College of The Albemarle, its employees, and students.

The development of a sexual relationship under such circumstances renders both persons involved and the college vulnerable to possible allegations of sexual misconduct. The college prohibits the abuse of power in romantic or sexual relationships. Trust and respect are diminished when those in positions of authority abuse or appear to abuse their power. All employees are expected to use good judgment in their relationships with other employees and students. Employees are prohibited from engaging in romantic or sexual relationships with students. Employees are also prohibited from engaging in romantic or sexual relationships with other employees, with whom there is a professional influence of power (i.e., supervising, teaching, advising, etc).

In instances where a romantic relationship exists prior to one partner becoming a student, it is incumbent on the faculty or staff member to report such relationship to Human Resources. The faculty or staff member and student must agree under such circumstances that the faculty or staff member will not teach, supervise, or advise said student.

Reporting Harassment

The college cannot resolve matters that are not reported. Every employee and student is responsible for immediately reporting harassment violations so that the college can take prompt action. Violations should be reported when:

- a. An individual feels that he/she has been harassed, including through a consensual relationship
- b. An individual has knowledge of another person being harassed

To report harassment or violations please contact your supervisor or the appropriate administrator:

- a. Employees may contact the Director, Human Resources
- b. Students may contact the Vice President, Student Success and Enrollment Management

To report sexual misconduct please refer to Policy 2-37: Sexual Misconduct.

Any employee who receives a complaint of harassment from another employee, student, or visitor and fails to report the complaint to the proper office as hereinafter stated shall be subject to appropriate disciplinary action, including but not limited to dismissal of employment. Irresponsible accusations made against another employee or student with a motive to harass, embarrass, or discredit the individual are contrary to this policy and may lead to disciplinary action.

Retaliation

Retaliation in any form against any person who has made a complaint of harassment in violation of the policy of College of The Albemarle is prohibited. Retaliation is defined as seeking to get back at, punish, or cause harm or detriment to the employment or academic standing of a person who asserts a claim of harassment. Regardless of the merits of the alleged harassment, any employee or student found to have retaliated, or threatened to retaliate, against any person pursuing his or her rights under this policy shall be subject to appropriate disciplinary measures, including but not limited to dismissal of employment or expulsion as a student.

Procedures

Due to the sensitive nature of conduct constituting harassment or sexual misconduct, a balance must be struck between confidentiality and due process. Accordingly, an administrative grievance procedure is offered with emphasis on confidentiality and with the following procedural features:

- a. Most non-Title IX harassment complaints are handled administratively. However, Title IX cases are usually resolved through the Hearing Process. The exception would be sexual misconduct cases which:
 - do not involve physical contact,
 - the respondent admits wrong doing, and
 - the claimant is willing to accept an administrative resolution.
- b. Administrative procedures are optional, and individuals can choose to bypass them, discontinue them, or initiate a formal grievance while using them, unless the violation is sexual assault in which case the process used must use the hearing process.
- c. The purpose of dealing with a complaint administratively is to stop the offending behavior and to resolve the matter as expeditiously as possible.
- d. While a complainant may choose to discontinue a grievance procedure, the college may be obligated to continue the investigation and seek measures to prevent reoccurrence of the violation.

A Hearing Process is offered with emphasis upon due process.

Administrative Grievance Process – applicable to harassment, retaliation, and select sexual misconduct cases

1. Any employee or student who believes he or she has been a victim of harassment, sexual misconduct or retaliation should contact the appropriate administrator and document in writing the name of the person believed to have engaged in harassment, the offensive conduct believed to constitute harassment, the nature of the conduct, and the names of any other witnesses thereto. The writing or documentation is not required, but it will be useful in any investigation or proceeding subsequently arising from the offensive conduct.
2. Any employee who believes he or she has been a victim of harassment, sexual misconduct or retaliation should report the matter to either Title IX Coordinator or to the Deputy Title IX Coordinator. Any employee who receives notice of a complaint of harassment or sexual misconduct shall immediately refer the complainant to the Title IX Coordinator, Deputy Title IX Coordinator (Students) or Deputy, Title IX Coordinator (Employees), as appropriate, and shall not attempt to investigate or otherwise dispose of the matter.
3. Upon receipt of a complaint alleging harassment, sexual misconduct or retaliation the appropriate Administrator shall immediately schedule a confidential appointment with the complainant of the alleged harassment, sexual misconduct or retaliation. The Administrator shall conduct the initial interview, and any other interviews or conferences subsequent thereto, in the presence of a counselor or supervisor, if desired by the complainant, to provide the complainant with support in discussing sensitive subjects and circumstances. At the initial interview, the Administrator shall assist the complainant of the alleged harassment or retaliation in preparing a written statement of the complaint to include the name and position of the accused, the date or dates of the alleged harassment and/or retaliation, a specific description of the conduct, actions or words which occurred on those dates and which are alleged to constitute harassment or retaliation, the names of any other witnesses to such conduct, words or actions, and the date and statements made during any private confrontation with the accused together with the results thereof. This statement of complaint shall be deemed complete when signed and dated by the complainant. The Administrator shall request any contemporaneous writing documenting the offensive conduct alleged to constitute harassment or retaliation prepared by the complainant of

such conduct, if any, at the initial interview. All documents and writings shall be retained in a separate, confidential file which shall not be released to anyone who is not directly involved in making the complaint, defending the complaint, or investigating the complaint on behalf of College of The Albemarle.

5. Within ten (10) working days of the preparation and receipt of the complete written statement of complaint, the Director, Human Resources shall meet confidentially with the person accused of harassment or retaliation in the presence of the counselor or supervisor, if applicable, who was present during the alleged complainant's initial interview. The college officials should seek resolution without identification of the complainant, if possible. If confidentiality is not possible, the complainant must determine whether or not to proceed to the next step. If so, the person accused shall be permitted to read the written statement of complaint, and may, but is not required, to make any comments or defense thereto. The accused shall be instructed that he or she shall not approach, write, or in any manner discuss the matter with the complainant until such time as the informal resolution conference occurs. During said ten (10) working days, Director, Human Resources may make other discreet and confidential inquiries deemed necessary to investigate the merits of the alleged harassment. Any such inquiry shall avoid to the extent possible disclosing the existence of the complaint and the names of those persons involved therewith.
6. Within ten (10) working days of the preparation and receipt of the complete written statement of complaint, the Director, Human Resources shall schedule an administrative resolution conference at such time and location as will ensure and protect confidentiality. The complainant and the accused shall each be provided with at least twenty-four (24) hours advance notice of the time and place of the conference. The complainant and the accused shall be afforded the opportunity to meet together with the Director, Human Resources and the counselor or supervisor selected for the initial interview with the alleged victim and the initial meeting with the accused. However, if either the complainant or the accused objects to meeting in the other's presence then the conference shall be conducted by means of the Director, Human Resources and the counselor or supervisor meeting in separate rooms with the complainant and accused at the location selected. The Director, Human Resources shall attempt to negotiate and mediate a resolution of the matter at the administrative resolution conference. The agreed resolution or the fact that no agreed resolution resulted shall be documented in writing and included in the college's record of the incident.

7. If no satisfactory resolution is achieved through this informal process, the complainant may choose to proceed with the Hearing Process.

Hearing Process – applicable to harassment and retaliation cases.

Any employee who believes he/she has been a victim of harassment by another employee or student, may file a formal grievance against the alleged harasser without first completing the administrative procedure.

1. For complaints in which the alleged harasser is a college employee, the complainant, who believes he or she has been a victim of harassment, may file a formal grievance against the alleged harasser without first completing the administrative procedure by submitting a written complaint to the Director, Human Resources. Complainants are encouraged to report harassment or retaliation as soon as possible. The Director, Human Resources shall appoint a five (5) member committee within ten (10) working days after receipt of the complainant's notice of intention to pursue the hearing procedure, to hear and determine the facts of the alleged harassment and/or retaliation, and to conclude by the greater weight of the evidence whether the policy has been violated, and, if so, recommend disciplinary action, if any. If either the accused or the complainant finds that additional time is needed to prepare his/her case for the hearing, then a request for an extension of time must be submitted in writing to the committee chair. The committee shall be charged with the duties imposed hereby and shall agree to keep the matter as confidential as possible. The committee shall select a chair, select the date, time, and place for the hearing and thereafter advise the accused and the complainant at least ten (10) working days in advance of the hearing date, time, place, and their respective rights to be present, to present evidence, to call witnesses, to cross-examine adverse parties or witnesses, and to be represented by counsel. The chair shall be responsible for conducting the hearing. The hearing shall be recorded. Within ten (10) working days after the hearing is completed, the committee (by majority vote) shall issue in writing its findings, conclusions, and recommendations as to disciplinary action, if any, to the President.
2. Copies of committee findings, conclusions, and recommendations shall be delivered to the accused and the complainant who shall have ten (10) working days thereafter to submit a written appeal to the President regarding the hearing, committee findings, conclusion, or recommendation. The letter of appeal must include a complete statement of the grounds for the appeal. While the appellant may or may not be invited by the President to make an oral argument, the President shall not receive any additional evidence in the

- matter, and his or her decision shall be based upon the record in the proceedings up to the date of the appeal to the President. Within ten (10) working days after receipt of the appeal, the President shall advise the accused and the complainant of his or her decision to adopt, modify, or reverse the findings, conclusion, or recommendations of the committee. If any finding, conclusion, or recommendation is not adopted, then reasons therefore will be stated by the President. The accused or complainant may appeal the President's decision to the Board of Trustees (or an ad hoc committee thereof) by letter to the Office of the President within ten (10) working days after receipt of the President's decision. The letter of appeal must include a full and complete statement of the grounds for the appeal.
3. Upon a timely appeal, the decision of the Board of Trustees (or an ad hoc committee thereof) shall be expressed in writing, with a copy to the accused and the complainant, and same shall be final.
 4. Any confidential personnel information not presented by the complainant may be redacted from the copy of any report or decision given to the complainant.
 5. The decision of the President and, if applicable, the Board of Trustees, shall specify the disciplinary action, if any, taken against the accused [i.e. warning, reprimand, suspension, (with or without pay), dismissal, probation, expulsion] and shall further specify what record, if any, shall be made of the incident in the accused person's regular personnel or student file.

In the event that the President is named as an offender of this policy the Grievance Process will be followed except that the Chair of the Board of Trustees will be substituted for the President in the process. The aggrieving party will be advised in writing of any corrective action taken and/or any decision of the Board of Trustees as soon as possible but not later than three (3) business days following the date of the grievance conference. The Board of Trustees will initiate such corrective action as deemed appropriate to resolve the grievance. In such an event, the decision of the Board of Trustees will be final.

The Grievance Procedure outlined above shall be the exclusive procedure utilized in harassment complaints and/or retaliations arising therefrom notwithstanding any other grievance procedure set forth by the Board of Trustees.