

2-37 Sexual Misconduct

I. Purpose

The purpose of this policy is to comply with Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of gender in the course of any federally funded educational program or activity, and to provide procedures for the prompt and equitable resolution of complaints of sexual misconduct. Sexual misconduct, as defined in this policy, includes both sexual harassment and sexual violence, which are forms of sex discrimination prohibited by Title IX. This policy also covers domestic violence, dating violence, and stalking in accordance with the Violence Against Women Act Amendments to the Clery Act.

This Sexual Misconduct policy applies to all members of the College community, including students, faculty, staff, employees, contractors, vendors, and visitors, and to all programs and activities sponsored by the College whether conducted on or off campus.

Misconduct that is not sexual in nature, but creates a hostile work environment, is covered under Policy 2-26, Unlawful Harassment Policy and Procedures.

II. Policy

College of The Albemarle is committed to maintaining an environment free from sexual harassment, sexual violence, domestic violence, dating violence and stalking. In accordance with the provisions of Title IX, College of The Albemarle prohibits discrimination on the basis of sex, including sexual misconduct. All employees have a duty to report. No employee is designated as a confidential resource. All complaints of sexual misconduct must be brought to the immediate attention of one of the following:

- A. Title IX Coordinator
- B. Deputy Title IX Coordinator (Students)
- C. Deputy Title IX Coordinator (Employees)

College of The Albemarle has an affirmative duty pursuant to Title IX to take immediate and appropriate action once it knows, or reasonably should have known, of any act of sexual misconduct in any of its educational programs or activities. College of The Albemarle will act on any complaint of sexual misconduct in order to resolve such complaints promptly and equitably. While activities covered by the laws of the community and those covered by the College's policies may overlap, the community's laws and the College's policies operate independently and do not substitute for each other. The College may pursue enforcement of its own policies whether or not legal proceedings are underway and may use information from law enforcement agencies and the court to determine whether College policies have been violated. Disciplinary action resulting from sexual misconduct may include dismissal from the College or termination of employment with the College. College disciplinary action is separate from, and may be in addition to, any criminal or civil penalties. Retaliation against a complainant or witnesses for filing or participating in the investigation of a sexual misconduct complaint is prohibited under this policy and Title IX. Retaliation is any overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation, or unlawful harassment against one or more individuals for exercising their rights (or supporting others for exercising their rights) under this policy. The College will investigate any reports of retaliation and take appropriate disciplinary action.

A. Definitions

1. Complainant: a person that makes a complaint or alleges that a violation has occurred.
2. Respondent: a person against whom a complaint is brought, or who is alleged to have committed a violation.
3. Sexual Misconduct: As used in this policy, sexual misconduct is an umbrella term that includes sexual harassment, sexual violence, domestic violence, dating violence and stalking, all of which are defined below.
 - a. Sexual Harassment: Behavior that constitutes sexual harassment, as currently defined in federal guidelines, includes unwelcome sexual advances, requests for sexual acts or favors, and other verbal or physical conduct of a sexual nature when:

- i. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, academic advancement, evaluation, or grades; or
 - ii. Submission to or rejection of such conduct by an individual is used as a basis for employment, academic advancement, evaluation, or grading decisions affecting that individual; or
 - iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive work or academic environment.
- b. Sexual Violence: Sexual violence is a form of sexual harassment prohibited by Title IX. It is defined as any physical sexual act perpetuated against a person's will or where the person is incapable of giving consent due to the use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. Sexual violence includes, but is not limited to, rape, sexual assault, sexual battery, and sexual coercion.
- c. Domestic Violence: The term domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, or who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner.
- d. Dating violence: The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, the frequency of interaction between the persons involved in the relationship.
- e. Stalking: The term stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - i. fear for his or her safety or the safety of others; or

- ii. suffer substantial emotional distress. Such behaviors may include, but are not limited to, the following:
 - 1) Non-consensual (unwanted) communication or contact (face-to-face, telephone, touching, electronic mail, instant messaging, texts, written letters, unwanted gifts, etc.)
 - 2) Harassment, either by the individual or through a third party
 - 3) Use of threatening gestures
 - 4) Pursuing or following
 - 5) Surveillance or other types of observation
 - 6) Trespassing
 - 7) Stalking also includes cyber-stalking which is the use of electronic or digital media to stalk an individual and results in fear or substantial emotional distress as delineated in items i and ii above.

Guidance: To be considered sexual misconduct, the reported behavior must be severe and pervasive, creating or having the potential to create, a hostile environment which a reasonable individual would perceive as deleterious to the victim's academic goals, or ability to perform their job.

- 4. Consent: Consent is the act of knowingly and affirmatively agreeing to engage in a sexual activity. Consent must be voluntary. Consent may not be inferred from silence, passivity, or lack of active resistance alone. An individual cannot consent who is under the age of legal consent; or who is substantially impaired by any drug or intoxicant; or who has been compelled by force, threat of force, or deception; or who is unaware that the act is being committed; or whose ability to consent is impaired because of a mental or physical condition; or who is coerced by supervisory or disciplinary authority. Consent may be withdrawn at any time. Prior sexual activity or relationship does not, in and of itself, constitute consent.

B. Emergency Procedures

Anyone who experiences or observes an emergency situation should call 911 immediately and then call campus security;

- 1. Elizabeth City Campus – 252-312-3905

2. Edenton-Chowan Campus – 252-722-2429
3. Dare County Campus – 252-216-6354
4. Regional Aviation and Technical Training Center – 252-435-7804

An emergency is defined as any situation, in the judgment of the individual, which urgent medical treatment or law enforcement assistance is needed because the crime is in progress or very recent. In the event of an emergency, the investigatory procedures for handling sexual assault by the local authorities will apply.

C. Reporting Options

Anyone in the College of The Albemarle community who in their judgment believes that they have been subjected to, or is aware of someone else being subjected to, sexual violence, sexual harassment, domestic violence, dating violence or stalking is encouraged to immediately report the incident to one of the following College representatives: Title IX Coordinator, Deputy Title IX Coordinator (Students), Deputy Title IX Coordinator (Employees), or Campus Security Services. A complete list of contact information is provided on the last page of this policy. The complainant is encouraged to complete an Incident Report Form. The written complaint will be submitted to the Title IX Coordinator. Any College representative who receives a complaint of sexual misconduct is to immediately notify the Title IX Coordinator. Any College representative receiving a report of the initial incident should document details and contact the Title IX Coordinator, who is required to maintain records of such incidents for the purpose of reporting campus crime statistics. A complainant will be informed of their right to notify law enforcement officials and will be assisted in doing so if they so choose. A complainant may also decline to notify such authorities. Note: In an effort to encourage reporting of sexual misconduct, the College will not bring charges against complainants if they are involved with collateral alcohol and/or other nonviolent violations of campus policy.

D. Confidentiality

The College will protect the confidentiality of the complainant to the extent permissible by law. If the complainant requests to remain anonymous, the College will take all reasonable steps to investigate and respond

consistent with the request, recognizing that the College's ability to respond may be limited. Often a person reporting or otherwise concerned about sexual misconduct wants a discussion to be confidential or off the record. Confidential discussions about sexual misconduct may be available from off-campus persons who, by law, have special professional status, such as, attorneys, clergy, medical personnel, and counselors in Sexual Assault Services.

- E.** 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. Any employee who is aware that he/she is violating this policy or may appear to be doing so should consult immediately with the Director, Human Resources to discuss a means of resolution.

F. Resources and Support

As an immediate priority, care will be taken to ensure the safety and well-being of the complainant, and to exercise all precautionary measures to prevent a repeat of the alleged sexual misconduct. Complainants will be provided information about appropriate college or local area resources, including law enforcement, legal services, medical services, and counseling and victim advocacy/support. A list of local resources is provided on the last page of this policy. Complainants will be informed in writing about options for, and available assistance in, changing academic and working situations if requested and if reasonably available. Complainants will be advised of the importance of preserving evidence that may be necessary to prove sexual assault.

G. Interim Actions

The College will take interim actions necessary to protect the complainant and prevent retaliation pending the investigation. Interim actions may include changes in academic or work situations, orders directing the complainant and respondent to avoid contact with one another, or any other appropriate measures.

H. Procedural Guidelines

The due process rights of both the complainant and the respondent will be protected. Both parties will receive written notification of their rights. Both the complainant and the respondent are entitled to have an advisor of their choosing present during any meeting or proceeding related to the investigation. An advisor can be anyone, not otherwise involved in the investigation, chosen by the complainant and/or the respondent to provide advice and/or support through the investigation and hearing process. The advisor may be present at all stages of the investigation and hearing, but is not allowed to actively participate, except as allowed by law. The advisor can be the eyes and ears of the complainant at the investigation and hearing when the complainant does not feel comfortable in the presence of the respondent.

1. Written Notification: Within ten working days of receipt of a sexual misconduct complaint and prior to any interview, the respondent must be given written notice of an alleged violation that would enable a reasonable person to recognize that the charge is consistent with the definition of the prohibited behavior as it appears in this policy.
2. Opportunity to Be Heard: The respondent must be given the opportunity to hear the evidence against him/her and to present his/her side of the alleged incident.

I. Procedures for Resolving Complaints

1. Investigating a Complaint: The College will conduct a prompt, fair and impartial investigation into complaints of sexual misconduct, whether or not there is also a law enforcement investigation. Complaints will be investigated by College representatives who have been trained. Upon receipt of a complaint, the Title IX Coordinator will conduct and document an initial inquiry to determine whether there is reasonable cause to conduct a full investigation. Within ten working days, the Title IX Coordinator will either decide to proceed with a full Title IX investigation, pass the complaint forward as a non-Title IX violation (examples: non-sexual assault, non-sexual harassment), or close the complaint with no further action. This decision is not appealable. If it is

found that there is reasonable cause to proceed, the Title IX Coordinator will provide guidance on conducting the investigation. The investigators may receive evidence from both the respondent and the complainant, and any witnesses identified by either party. The parties' prior sexual history will be excluded from the investigation and college proceedings, except when a relevant pattern of behavior exists. This investigation will be completed within 60 calendar days after receipt of the complaint. Where the allegations are complex or other factors delay the investigative process, an extension may be granted. The existence of criminal proceedings will not necessarily delay or interrupt the procedures outlined in this policy, unless the law enforcement agency or prosecution requests that the College procedures be suspended, in which case the College will determine whether and for how long to suspend its procedures. At the conclusion of the investigation, the investigators will make a report. The report shall describe the investigation and all relevant evidence obtained in it. The investigators shall arrive at their conclusions based on a preponderance of evidence, meaning whether it is more likely or not that this policy was violated.

a. When the respondent is a student:

When an assessment has determined whether or not a Title IX violation has occurred, the Title IX Coordinator will forward the complaint, the findings of the investigation, and recommendations to the Deputy Title IX Coordinator (Students). Both the complainant and respondent will be notified of the outcome of the investigation and the procedures for processing the complaint.

b. When the respondent is an employee:

When an assessment has determined whether or not a Title IX violation has occurred, the Title IX Coordinator will forward the complaint to the Deputy Title IX Coordinator (Employees). Both the complainant and respondent will be notified of the outcome of the investigation and the procedures for processing the complaint.

2. Processing Complaints – Administrative Process: In select cases, designated by the Title IX Coordinator, administrative actions can be

taken that will effectively stop the misconduct. The following conditions must be satisfied for an informal resolution process to be initiated:

- a. The Title IX Coordinator must have reviewed the matter to the extent necessary to confirm that it is of the type that would be appropriate for an informal resolution process and must have concluded, in consultation with appropriate college employees, that use of an informal resolution process would be consistent with the college's legal obligations under Title IX or otherwise;
- b. Participating parties must have voluntarily elected to pursue an informal resolution process without pressure or compulsion from others and must have been advised that they may withdraw from the process at any time;
- c. Respondent must acknowledge the substance of the underlying events and that the Complainant and other affected parties have reported experiencing harm as a result; and
- d. Individuals who wish to participate in an informal resolution process must have successfully completed preparatory meetings with appropriate staff.
- e. The complainant may choose to resolve the complaint informally, except that informal processes are not appropriate for cases involving alleged sexual assault. At any time the complainant may choose to end the informal process in favor of the formal process.

The administrative process is the same as used to administratively resolve non-sexual harassment complaints and is identified in Policy 2-26, Unlawful Harassment Policy and Procedures, "Procedures," Pages 4-6 and provided as Appendix C of this policy.

3. Processing Complaints – Hearing Process: The administrative process is not appropriate for cases of alleged sexual assault. Also, the complainant may, at any point in the administrative process, ask to have the incident referred to the hearing process. The hearing process is to provide a fair and impartial hearing for both the complainant and respondent. The hearing process is very comprehensive and consists of many critical steps as outlined in Appendix A of this policy. Both the complainant and the respondent should be knowledgeable of the

process as should any advisor the parties may have requested. To ensure all steps in the process are followed, the Title IX Coordinator or one of the Deputy Title IX Coordinators will complete the checklist shown in Appendix B of this policy.

4. **Sanctions and Protective Actions:** Upon a finding of sexual misconduct, disciplinary action will take into account the nature and severity of the violation. More than one disciplinary action may be taken. Disciplinary actions that may be taken include, but are not limited to, schedule changes, admonitions, probation, suspension, dismissal from the College and/or termination from employment. In addition, the College may take protective measures as appropriate, including no-contact orders (while on campus), trespass notices, or other protective measures. The College will assist the complainant in changing academic and work situations if requested and if reasonably available. Campus Security will enforce court-ordered no-contact, restraining or protective orders to the fullest extent of the law.

NOTE: If you have a court ordered protective order, please provide a copy to Campus Security and the Title IX Coordinator.

5. **Record Keeping:** Records of investigations into alleged sexual misconduct by students will be maintained by the Deputy Title IX Coordinator (Students). Records of investigations into alleged sexual misconduct by employees, contractors, or visitors will be maintained by the Deputy Title IX Coordinator (Employees).

J. Sexual Assault Information and Resources

If an assault does occur, you should:

1. Get to a safe place as soon as possible.
2. Call 911 and then call campus security at
 - a. Elizabeth City Campus – 252-312-3905
 - b. Edenton-Chowan Campus – 252-722-2429
 - c. Dare County Campus – 252-216-6354
 - d. Regional Aviation and Technical Training Center – 252-435-7804

- e. College faculty and staff members can also assist you in reporting the incident.
3. Try to preserve physical evidence. Do not bathe or change clothes.
4. Get medical attention as soon as possible.
5. Contact someone to stay with you and support you. Consider contacting the regional Sexual Assault and Domestic Violence hotline for hospital accompaniment and for information and support.
6. Lists of resources, including some free and confidential services are provided on the last page of this policy.

K. Student/Employee Rights Provisions

Sexual misconduct is not tolerated at College of The Albemarle. Reports of sexual assault, dating/domestic violence, or stalking are taken seriously. It is important to the College that all parties are informed, protected, and respected. The following rights are afforded to any College student, staff, or faculty member who becomes involved in such an incident. It is our hope that these rights will provide you with adequate information from which to choose your options.

1. Confidentiality. Above all, confidentiality must be protected. Identifying information of a victim will be protected as much as possible. This means that a victim's name will not be published or otherwise publicized without her/his permission, when possible. When a person makes an official complaint to authorities, all possible protections will be afforded this individual, whether or not she/he participates in any investigation. When the College needs to act to protect the safety of others, absolute confidentiality may not be possible. For absolute confidentiality, refer to the resource list provided at the end of this policy.
2. Timely warnings. Any timely warning that is broadcast through the College's Mass Notification, the College's websites or emails for the safety of our community will not identify a victim by name.
3. Reporting options. It is your choice whether or not you decide to report your victimization. At College of The Albemarle, there are several

offices to report an incident if you choose to do so. See list at bottom of this policy.

4. No contact or protective orders. The College will honor any protective order that you may have acquired through the local courts. Please bring a copy of such a court order to Campus Security for their information and enforcement. In addition, a College administrative no contact order may be created by the Title IX Coordinator once the incident is reported to that office.
5. Preserving physical evidence. If you are considering a criminal prosecution, it is extremely important to preserve all evidence of an assault. If you go to a hospital as a result of a penetrating sexual assault, you are entitled to a free evidence collection examination called a SANE exam. SANE stands for Sexual Assault Nurse Examiner. The nurse will collect the evidence and ask the police in the jurisdiction where the crime occurred to pick it up and store it for at least six months. The evidence will be in a box marked only with a number, not your name. You are not required to make an official police report for this evidence to be collected. If you later decide to make such a report, the hospital will give your name to the police and the evidence kit will be tested for possible use in a court case.
6. Student conduct process. If you are a student and your respondent was also a student, then you may choose to report the incident (as the complainant) to the Deputy Title IX Coordinator (Students) to begin a Title IX investigation. Additionally, you may also choose to contact Campus Security to use this process or to begin a criminal investigation. This is not a criminal investigation; you may or may not choose to contact the police to file criminal charges. An investigation will be conducted on campus to determine whether the respondent is responsible for the act that you have reported. Sanctions for this process are confined to the College only and range from probation to dismissal, depending on the severity of the incident.
7. Employee conduct process. If you are an employee, then you may choose to report the incident to the Deputy Title IX Coordinator

(Employees). Additionally, you may also choose to contact Campus Security to use this process or to begin a criminal investigation.

8. Requests for changes. You may request a change in academic setting (class or campus) or work assignment in order to be more clearly separated from the accused perpetrator. Such a request will be granted to the greatest extent possible. These requests should be made to the Deputy Title IX Coordinator (Students) or the Deputy Title IX Coordinator (Employees). Requested changes will be made as soon as alternative arrangements can reasonably be made and regardless of whether you choose to pursue an investigation into your incident.
9. Fair and impartial investigation and resolution. You can expect a fair and just process as your complaint is handled, through the Title IX Coordinator or one of the Deputy Title IX Coordinators.
10. Retaliation concerns. Threats, intimidation, and any form of retaliation for bringing a complaint of sexual misconduct are prohibited by the Sexual Misconduct Policy as well as Federal law and may be grounds for disciplinary action. If any retaliation occurs, it is important to contact the Title IX Coordinator, or the Deputy Title IX Coordinators.
11. Community resources. Since College of The Albemarle does not offer mental health counseling to students or employees, it is important to be aware of community resources that are both free and confidential. A list of contact information, including free and confidential counseling, is provided on the last page of this policy.

L. On-Campus Resources

1. Students or Employees: To report the incident and begin a criminal investigation:
 - a. **If it is an emergency, please call 911.**
 - b. Elizabeth City Police Department can be reached at 252-335-4321.
 - c. Pasquotank Sheriff's Office can be reached at 252-338-2191.
 - d. The Currituck Sheriff's Office can be reached at 252-453-8204
 - e. The Dare County Sheriff's Office can be reached at 252-475-5980
 - f. The Manteo Police Department can be reached at 252-473-2069

2. Students or Employees: To report the incident and begin a Title IX investigation contact:
 - a. Title IX Coordinator, Deputy Title IX Coordinator for Students or Employees, or Title IX Investigators
 - b. Campus Security:
 - I. Elizabeth City Campus – 252-312-3905
 - II. Edenton-Chowan Campus – 252-722-2429
 - III. Dare County Campus – 252-216-6354
 - IV. Regional Aviation and Technical Training Center – 252-435-7804
 - V. College faculty and staff members can also assist you in reporting the incident.

M. Off-Campus Resources

1. Albemarle Hopeline
Hopeline can be reached at 252-338-5338. The rape crisis hotline can be reached at 252-338-3011.
2. Clerk of Court Office, Elizabeth City
The Clerk of Court Office can be reached at 252-331-4600.
3. District Attorney's Office
The Office of the District Attorney (First Prosecutorial District) can be reached at 252-331-4530.
4. Legal Aid of North Carolina
Legal Aid's closest office is located in Ahoskie, NC, and can be reached at 252-332-5124.
5. NCCASA, North Carolina Coalition Against Sexual Assault
NC-CASA can be reached at 919-871-1015.
6. Pasquotank County Magistrates
Pasquotank County Magistrates can be reached at 252-331-4599.
7. Pasquotank Department of Social Services
Pasquotank's Department of Social Service can be reached at 252-338-2126.
8. Sentara Albemarle Medical Center
Sentara Albemarle Medical Center's can be reached at 252-335-0531.

Chapter Name:	Personnel Policies
Policy Title:	Sexual Misconduct
Date Approved:	02/15
Date Revised:	12/16, 08/17, 12/19

Policy 2-37

Page 15 of 15

9. Hotline Resources

- a. Albemarle Hopeline (24-hour rape crisis hotline) 252-338-3011
- b. National Coalition of Anti-Violence Programs (24-hour hour violence prevention hotline; dedicated to LGBTQ individuals) 212-714-1141
- c. National Dating Abuse Helpline (24-hour peer advocate dating abuse hotline) 1-866-331-9474
- d. National Domestic Violence Hotline (24-hour hotline) 1-800-799-7233
- e. One Love MyPlan App (tool for determining whether a relationship is unhealthy and for safety planning) Available for free download in iTunes App Store and Google Play