

Important Definitions

A. Advisor. A person selected by the complainant or respondent to represent them at the live Title IX hearing. This person may be a lawyer but is not required to be. If one party presents with an Advisor and the other party does not have one, an Advisor must be provided by the College, at no charge, to that party. The Advisor provided must be independent of the Title IX Coordinator or Co-coordinator, Investigator or Hearing Officer and cannot be any other person(s) who may have a perceived or real conflict of interest.

B. Complainant/Respondent. An individual who is alleged to be the victim of conduct that could constitute sexual harassment is defined as the “*complainant*” during the process set forth herein. An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment is defined as the “*respondent*” during this process.

C. Consent. An informed decision, freely given, made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent cannot be given by an individual who is asleep, unconscious, or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or is under duress, threat, coercion, or force. Past consent does not imply future consent. Silence or an absence of resistance does not imply consent. Consent can be withdrawn at any time.

D. Domestic Violence/Dating Violence.

1. Violence against a person when the accuser and accused:

- a. Are current or former spouses;
- b. Live or have lived together as a spouse or intimate partner;
- c. Are related by blood or adoption;
- d. Are related or were formally related by marriage; or,
- e. Are adult or minor children of a person in a relationship described above.
- f. Are dating, or who have dated, or who have or had a sexual relationship. “Dating” and “dated” do not include fraternization between two (2) individuals solely in a business or non-romantic social context.

2. Violence includes, but is not necessarily limited to:

- a. Inflicting, or attempting to inflict, physical injury on the accuser by other than accidental means;
- b. Placing the accuser in fear of physical harm;
- c. Physical restraint;
- d. Malicious damage to the personal property of the accuser, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by the accuser; or,
- e. Placing the accuser in fear of physical harm to any animal owned, possessed, leased, kept, or held by the accuser.

E. Education program or activity. Includes locations, events or circumstances over which ACCC exercised substantial control over both the respondent and the context in which the sexual harassment occurred. This applies to all education programs or activities, whether such programs or activities occur on-campus or off-campus. ACCC must respond when sexual harassment occurs in the school's education, program or activity against a person in the United States.

F. Evidentiary Standard. Atlantic Cape Community College elects to use the Preponderance of the Evidence standard as its evidentiary standard.

G. Formal Complaint. Document filed by a complainant and signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and states:

1. At the time of filing of a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
2. A formal complaint may be filed with the Title IX Coordinator in person, by mail or by electronic mail.

H. Grievance Process. Process by which formal complaints of sexual harassment are resolved. This process must:

1. Include a "Live "Hearing"
2. Treat complainants equitably by providing remedies any time a respondent is found responsible.
3. Treat respondents equitably by not imposing disciplinary sanctions without following the grievance process.
4. Design remedies provided to a complainant, when a respondent is found to be responsible, to maintain the complainant's equal access to education. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
5. Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent or witness.
6. Not use, rely on or seek disclosure of information protected under legally recognized privilege, unless the person holding such privilege has waived the privilege.
7. Apply equally to both parties.

I. Hearing Officer. Person charged with overseeing the live hearing resultant from a Title IX investigation and determination of a cause of action. This person is responsible is the decision maker after review of the evidence including verbal testimony of the complainant and the respondent. This person must be independent of the Title IX Coordinator, Co-coordinator or Investigator and cannot be any other person(s) who may have a real or perceived conflict of interest or bias for or against complainants or respondents.

J. Investigator. This is the person or persons assigned to investigate a Title IX violation at the request of the Title IX Coordinator or Co-coordinator. This person must be independent of the Title IX Coordinator, Co-coordinator or Hearing Officer and cannot be any other person(s) who may have a real or perceived conflict of interest or bias for or against complainants or respondents.

K Responsible Employee. An ACCC employee who has the authority to institute corrective measures of sexual misconduct, discrimination, and/or harassment; who has the duty to report incidents of sexual misconduct, discrimination, and/or harassment; or, whom a student could reasonably believe has this authority or duty.

L. Retaliation. Action taken against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop, or attempted to stop, actual or perceived sexual misconduct, discrimination, or harassment. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy. Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purposes of interfering with any right or privilege secured by Title IX constitutes retaliation.

M. Sexual Assault. The nonconsensual sexual contact with the accuser by the accused, or the accused by the accuser when force or coercion is used to accomplish the act, the sexual contact is accomplished without consent of the accuser, and the accused knows or has reason to know at the time of the contact that the accuser did not or could not consent. Sexual contact includes, but is not limited to, the intentional touching of the accuser's, the accused's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the accuser's, the accused's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification.

N. Sexual Discrimination. Treating individuals less favorably because of their sex (including pregnancy or sexual orientation/gender identity/expression) or having a policy or practice that has a disproportionately adverse impact on protected class members.

O. Sexual Harassment (student-on-student): for purposes of allegations of sexual harassment where both the accused and the accuser are students, sexual harassment is defined as unwelcome conduct directed toward a person on the basis of sex that is so severe and pervasive, and objectively offensive that it effectively denies the accuser equal educational access.

P. Sexual Harassment. In all other instances involving allegations of sexual harassment not addressed in Section III. H., above, sexual harassment is defined to include unwelcome

sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault, where a tangible employment or educational action is conditioned upon submission to or rejection of unwelcome sexual advances, (*quid pro quo*) or where conduct is so severe and pervasive and objectively offensive that the individual is effectively denied equal access to the College's resources and opportunities. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex.

Harassment does not have to include intent to harm, be directed at a specific person or group of people, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine versus male/masculine or a failure to conform to those gender stereotypes.

1. Consistent with the law, this policy prohibits two (2) types of sexual harassment:
 - a. Tangible Employment or Educational Action. (*Quid pro quo*) This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment, or participation in a College activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a College program or activity. Generally, perpetrators will be agents or employees with some authority from the College.
 - b. Hostile Environment. A hostile environment based on sex exists when harassment is sufficiently serious (i.e., severe and pervasive) and objectively offensive so as to effectively deny or limit a person's ability to participate in or benefit from the College's programs, services, opportunities, or activities; or harassment that creates a hostile environment (hostile environment harassment) violates this policy. A hostile environment can be created by anyone involved in a College program or activity (i.e., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a single serious incident, such as a sexual assault, even if isolated, can be sufficient.
2. In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:
 - i. The degree to which the conduct affected one or more students' education or individual's employment;
 - ii. The nature, scope, frequency, duration, and location of the incident or incidents;

- iii. The identity, number, and relationships of persons involved; and
- iv. The nature of higher education.

3. Examples of conduct that might rise to the level of sexual harassment include, but are not limited to, the following:

- a. Refusing to hire, promote, or grant or deny certain privileges because of acceptance or rejection of sexual advances;
- b. Promising a work-related benefit or a grade in return for sexual favors;
- c. Suggestive or inappropriate communications, email, notes, letters, or other written materials displaying objects or pictures, which are sexual in nature, that would create hostile or offensive work, living, or educational environments;
- d. Sexual innuendoes, comments, and remarks about a person's clothing, body, or activities;
- e. Suggestive or insulting sounds;
- f. Whistling in a suggestive manner;
- g. Humor and jokes about sex that denigrate men or women;
- h. Sexual propositions, invitations, or pressure for sexual activity;
- i. Use in the classroom of sexual jokes, stories, remarks, or images that are in no way or only marginally relevant to the subject matter of the class;
- j. Implied or overt sexual threats;
- k. Suggestive or obscene gestures;
- l. Patting, pinching, and other inappropriate touching;
- m. Unnecessary touching or brushing against the body;
- n. Attempted or actual kissing or fondling;
- o. Suggestive or inappropriate acts, such as comments, innuendoes, or physical contact based on one's actual or perceived sexual orientation and/or gender identity/expression;
- p. Graphic or written statements (including the use of cell phones and the internet), or other conduct that may be physically threatening, harmful, or humiliating in a manner related to sex.

Q. Sexual Misconduct. For the purposes of this policy, sexual misconduct is defined as dating violence, domestic violence, stalking, and sexual assault.

R. Stalking. A willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the accuser to feel terrorized, frightened, intimidated, threatened, harassed, or molested. Harassment means conduct directed toward the accuser that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the accuser to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

S. Supportive Measures. Individualized services reasonably available that are non-punitive, non-disciplinary and not unreasonably burdensome to the other party whole designed to ensure equal educational access, protect safety or deter sexual harassment.

T. Title IX Coordinator. The Title IX Coordinator is the ACCC official responsible for overseeing the College's response to sexual misconduct, discrimination, and harassment reports and complaints and for addressing any patterns or systemic problems identified by such reports and complaints. This official oversees and coordinates the College's programs and training efforts with regard to sexual misconduct, discrimination, and harassment. The Title IX Coordinator conducts investigations and has the authority to implement all interim measures deemed appropriate. The Title IX Coordinator may delegate investigatory responsibility to Title IX Co-coordinators who are also authorized to implement appropriate interim measures. All requests by complainants for confidentiality should be evaluated by the Title IX Coordinator.