

# Appendix E: Sexual Misconduct Policy

This policy prohibits all forms of sexual or gender-based harassment, discrimination or misconduct, including sexual violence, sexual assault, and stalking and intimate partner violence. Misconduct of this nature is contrary to Gadsden State's institutional values and prohibited by local, state and federal laws, College policies, and the policies of the Alabama Community College System. Any individual who is found to have violated this policy may face disciplinary sanctions up to and including expulsion or termination of employment.

All College community members are strongly encouraged to report information regarding any incident of sexual harassment, sexual violence, stalking or intimate partner violence directly to the Safety and Security and the Title IX Coordinator. The College cannot take appropriate action unless an incident is reported to a "responsible employee" of the College. Upon receipt of a report, the College will take prompt and effective action by: providing interim remedies and support for individuals who make a report or seek assistance under this; conducting a review of the conduct under Title IX of the Education Amendments of 1972; addressing the safety of individuals and the campus community; and as warranted, pursuing resolution through informal measures or formal disciplinary action against the accused.

Retaliation against any person who makes a complaint or participates in the complaint process is a violation of College policy, and should be reported to the Title IX Coordinator. A finding of retaliation may result in disciplinary action independent of any sanctions imposed as a result of the underlying allegations of discrimination and/or harassment.

## Scope of Policy

The policy applies to all College community members, including students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with the College or on College property.

This policy applies to conduct occurring on College property or at College-sanctioned events or programs that take place off campus. In situations in which both the Complainant and Respondent are members of the College community, this policy will apply regardless of the location of the incident. In particular, off campus conduct that is likely to have a substantial adverse effect on, or poses a threat of danger to, any member of the College community or College is covered under this policy.

## Privacy vs. Confidentiality

The College is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual violence, and stalking or intimate partner violence. All College employees who are involved in the College's Title IX response receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report.

Privacy and confidentiality have distinct meanings under this policy.

**Privacy:** Privacy generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who "need to know" in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

**Confidentiality:** Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others.

When a report involves suspected abuse of a minor under the age of 18, the College is required by law to notify local law enforcement and the local agency for child protective services.

**Request for Confidentiality:** Where a Complainant requests that his/her name or other identifiable information not be shared with the Respondent or that no formal action be taken, the College will balance this request with its dual obligation to provide a safe and non-discriminatory environment for all College community members and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a Respondent. In making this determination, the College may consider the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the College is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or a member of the Title IX team will inform the Complainant about the chosen course of action, which may include the College seeking disciplinary action against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

## **Prohibited Conduct and Definitions**

The College prohibits all forms of sexual and gender-based harassment, including sexual violence and intimate partner violence. Each of these terms encompasses a broad range of behavior. In general, sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to incapacitation. Intimate partner violence refers to any act of violence or threatened act of violence, sexual or otherwise, against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person.

Within these broad categories, the College prohibits the following specific conduct:

1. **Sexual Harassment:** Any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when:
  1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a College program or activity;  
or
  2. Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or
  3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and objective standard.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct of one or more of the following:

- **Physical conduct:** Unwelcome touching, sexual/physical assault, restraining or blocking movements, unwanted sexual advances
- **Verbal conduct:** Making or using derogatory comments, epithets, slurs or humor, verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations

- Visual conduct: Leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters, severe, visual displays of suggestive, erotic, or degrading sexually oriented images
  - Written conduct: letters, notes or electronic communications containing comments, words, or images described above
  - Quid pro quo conduct: Direct propositions of a sexual nature between those for whom a supervisory or other authority relationship exists, offering employment benefits in exchange for sexual favors, making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity with requests for private meetings with no academic or work purpose
2. Sexual Assault: Having or attempting to have sexual intercourse with another individual:
    - By force or threat of force;
    - Without effective consent; or
    - Where that individual is incapacitated.
  3. Sexual Exploitation: Occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to: observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved; non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved; exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances; knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge; sexually-based stalking and/or bullying; and inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
  4. Stalking: A course of physical or verbal conduct directed at another individual that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. Stalking includes cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.
  5. Intimate Partner Violence

Intimate partner violence is often referred to as dating violence, domestic violence or relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the Respondent.

## Coordination with Law Enforcement

The College encourages Complainants to pursue criminal action for incidents of sexual harassment, sexual violence and intimate partner violence that may also be crimes. The College will assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

## Investigation

The College will seek to complete the investigation within 20 (twenty) business days of receiving the complaint, but this time frame may be extended depending on the complexity of the circumstances of each case. Information gathered during the investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the College campus community, and impose remedies as necessary to address the effects of the conduct cited in the report. Where there is sufficient information set forth that, if proven, would constitute a

violation of policy, the College will have the discretion to institute Formal Resolution proceedings against the Respondent. At the conclusion of the investigation, the College will notify all parties that the investigation is complete and provide information about next steps in the process.

## **Informal Resolution**

Informal resolution is designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that informal resolution may be appropriate, the College will take immediate and corrective action designed to eliminate a hostile environment. Informal resolution may not be used in cases involving sexual violence or assault.

Participation in informal resolution is voluntary and either party can request to end informal resolution at any time.

## **Formal Resolution**

Disciplinary action against a Respondent may only be taken through Formal Resolution procedures. Because the relationship of students, staff, and faculty to the College differ in nature, the procedures that apply when seeking disciplinary action necessarily differ as well. Each of the procedures, however, is guided by the same principles of fundamental fairness and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this policy.

## **Time Frame for Resolution**

The College seeks to resolve all reports within 45 days of the initial report. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Extenuating circumstances may arise that require the extension of time frames, including extension beyond 45 days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.

## **Formal Resolution**

Formal resolution of a complaint under the Sexual Harassment and Assault Policy will occur through the use of a Hearing Panel.

### **A. Hearing Panel**

The hearing panel consists of the deputy Title IX Coordinators. The Hearing Panel is supported by the Coordinator, who is present at hearing panel meetings, but is not a voting member of the panel. The Coordinator will meet with all involved parties prior to the hearing, be present during the hearing to serve as a resource for the hearing panel on issues of policy and procedure, and to ensure that policy and procedure are appropriately followed throughout the hearing.

### **B. Advisors, Support Persons, and Attorneys**

In any hearing, the Complainant and Respondent may choose to be assisted by an advisor. The advisor may accompany the student to any College investigative, administrative or adjudicative meeting, including the panel hearing. The advisor may not speak to the panel during the hearing.

A Complainant or Respondent may choose to seek the advice and assistance of an attorney but the attorney may not participate in investigatory interviews, informal resolution proceedings, or formal resolution via administrative hearing or Hearing Panel. Similarly, the College will not recognize or enforce agreements between the parties outside of these procedures.

### **C. Pre-Hearing Procedures**

1. **Notice of Charges**

following the determination that there is sufficient information to move forward with a hearing, the Coordinator will send letters to both the Complainant and the Respondent. The letter will provide a brief summary of the conduct at issue and the specific provision of the policy violation(s) that are alleged to have taken place.

2. **Pre-Hearing Meeting with Complainant and Respondent**

The Coordinator will contact the Complainant and Respondent to schedule separate meetings to explain the hearing process. If the Complainant and/or Respondent have elected to have advisors throughout the hearing process, the advisor is encouraged to accompany the Complainant/Respondent to this initial meeting.

3. **Notice of Hearing**

Once each party has met with the Coordinator, a Notice of Hearing is sent to the Complainant and the Respondent. The hearing will be scheduled within ten (10) business days of the date of the Notice of Hearing. Under extenuating circumstances, this time frame may be extended.

4. **Pre-Hearing Review of Documents**

The Complainant and the Respondent will each have the opportunity to review all investigative documents, subject to the privacy limitations imposed by state and federal law, at least two (2) business days prior to the hearing.

5. **Witnesses**

The Complainant, Respondent, and the hearing panel all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character.

**D. Hearing Panel Procedure**

1. **Attendance at Hearing**

If a party does not attend a hearing for any non-emergency or compelling reason, the hearing may be held in his/her absence.

A Respondent will not be permitted to withdraw from the College prior to the conclusion of an investigation or formal resolution under this policy. If a Respondent chooses not to participate, the College will move forward with the hearing and imposition of sanction, if any, in absentia. The Respondent's academic transcript will be marked Withdrawal Pending Disciplinary Action, or, if finally resolved in absentia, with the final outcome in accordance with regular practice under this policy.

2. **Participants in Hearing Procedures**

The hearing panel is a closed hearing; it is not open to the public. The individuals who may appear before the hearing panel are: the Complainant; the Respondent; any individual serving as an approved advisor or support person; and any individuals appearing as witnesses.

3. **Hearing Panel Procedures**

The hearing is an informal proceeding not comparable to a criminal trial; it is the mechanism by which the College assesses, and as appropriate, takes formal disciplinary action regarding a violation of College policy. These procedures are entirely administrative in nature and are not considered legal proceedings. Neither party may audio or video record the proceedings, nor is formal legal representation allowed.

The hearing panel must review all pertinent information regarding the incident in question prior to the date of the hearing panel. Relevant information supporting the violation(s) alleged may be offered in the form of written statements, documents, items, or oral information from the Complainant, the Respondent, and witnesses.

At the conclusion of the presentation of all witnesses, the Complainant and Respondent will each be given a brief final opportunity to address any outstanding issues of fact. .

4. **Deliberation**

After all of the information has been presented, all parties will be dismissed and the hearing will be formally concluded.

The panel members will conduct their deliberations in private. The panel must complete their deliberations within two (2) business days, but every attempt will be made to complete the deliberations promptly. The Coordinator may remain for deliberations, but may not participate in the deliberations and may not vote.

If the panel finds the Respondent responsible, the panel will then recommend appropriate sanctions. The Coordinator will review the recommendations and impose an appropriate sanction.

The findings of the hearing panel will be reduced to writing. The findings will detail the findings of fact and the basis/rationale for the decision of the hearing panel, making reference to the evidence that led to the finding.

## E. Sanctions

A hearing panel that finds a Respondent responsible for a violation of this policy may recommend appropriate sanctions that may include:

1. **Warning:** Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
2. **Censure:** A written reprimand for violating the Code of Student Conduct or other College policy. The student is officially warned that continuation or repetition of prohibited conduct may be cause for additional conduct action including probation, suspension, or expulsion from the College.
3. **Disciplinary Probation:** Exclusion from participation in privileged activities for a specified period of time. Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.
4. **Restitution:** Repayment to the College or to an affected party for damages resulting from a violation of this Code. To enforce this sanction, the College reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.
5. **Suspension:** Exclusion from College premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the student's conduct file. Conditions for readmission may be specified in the suspension notice.
6. **Expulsion:** Permanent termination of student status and exclusion from College premises, privileges, and activities. This action will be permanently recorded on the student's academic transcript.
7. **Withholding Degree:** The College may withhold awarding a degree otherwise earned until the completion of the process set forth in this Code, including the completion of all sanctions imposed, if any.

The hearing panel may deviate from the range of recommended sanctions, based upon a full consideration of the following factors: (1) the Respondent's prior discipline history; (2) how the College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the Respondent has accepted responsibility for his actions; (7) the need to deter similar conduct by others; and (8) any other mitigating or aggravating circumstances, including the College's values.

The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of the appeal.

## F. Outcome Letter

The outcome of the hearing panel will be final and communicated to the Complainant and Respondent in writing, usually within four (4) business days from the date the hearing is concluded. The notification of each party should occur at or near the same time.

For reports involving sexual violence, the Complainant will be fully informed of any sanctions. For all other reports under this policy, the Complainant will be informed of only those sanctions that directly relate to the Complainant, consistent with FERPA and other applicable law.

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct complaints pursuant to FERPA requirements.

## **G. Appeals**

Either party may appeal the decision of the hearing panel to the President. The appeal must be in writing and filed within five (5) business days of receiving the outcome letter. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.

Each party will be given the opportunity to respond in writing to the other party's appeal. Any response by the opposing party must be submitted to the President within three (3) business days from receipt of the appeal.

Sanctions imposed are implemented immediately unless the President stays implementation pending the outcome of the appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The President will render a written decision on the appeal to the Complainant and Respondent within ten (10) business days from the date of the submission of all appeal documents by both parties. The President's decision is final.

## **H. Records**

The Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Complaints resolved by means of Title IX assessment or informal resolution are not part of a student's conduct file or academic record or of an employee's personnel file.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a student's conduct record and an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's personnel file.