

SOUTHWESTERN COMMUNITY COLLEGE	STUDENT SERVICES <b>DISCRIMINATION AND UNLAWFUL HARASSMENT</b>	Policy 6.03.03
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Southwestern Community College (“College”) strives to make its campuses safe and welcoming learning and working environments. Pursuant to the Clery Act, Title IX of the Education Amendments of 1972, the Violence Against Women Act, the Campus SaVE Act and other applicable federal and state laws and regulations, the College hereby adopts these procedures when investigating, disciplining and educating the College community about sexual harassment and sexual-based violence.

Also, pursuant to the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973 and other applicable federal and state laws and regulations, the College prohibits discrimination in its services, employment and programs based on race, religion, ethnicity, national origin, gender, gender identity, sex, age, disability, genetic information and veteran status.

## I. DEFINITIONS

The following definitions shall apply to these Procedures and shall be collectively referred to herein as “discrimination, harassment and sexual-based violence”.

- A. **Confidential Employee** – is not a Responsible Employee and is not required to report incidents of sexual misconduct to the College’s Title IX Coordinator if confidentiality is requested by the student. Campus counselors are considered Confidential Employees. If a student is unsure of someone’s duties and ability to maintain one’s privacy, the student should ask the person before he/she speaks to him/her.
- B. **Consent** – explicit approval to engage in sexual activity demonstrated by clear actions or words. This decision must be made freely and actively by all participants. Non-verbal communication, silence, passivity or lack of active resistance does not imply consent. In addition, previous participation in sexual activity does not indicate current consent to participate and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent has not been obtained in situations where the individual: i) is forced, pressured, manipulated or has reasonable fear that they will be injured if they do not submit to the act; ii) is incapable of giving consent or is prevented from resisting due to physical or mental incapacity (including being under the influence of drugs or alcohol); or iii) has a mental or physical disability which inhibits his/her ability to give consent to sexual activity.

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- C. **Dating Violence** – crimes of violence against a person with whom the person has or had a social relationship or a romantic or intimate relationship.
- D. **Discrimination** – any act or failure to act that unreasonably and unfavorably differentiates treatment of others based solely on their race, religion, ethnicity, national origin, gender, sex, age, disability, genetic information and veteran status. Discrimination may be intentional or unintentional.
- E. **Domestic Violence** – crimes of violence against a current or former spouse or intimate partner, a person with whom the individual shares a child in common, a person with whom the individual cohabitates or has cohabitated as a spouse, a person similarly situated to the individual as a spouse, a person who is related to the individual as a parent, child or person who is related to the student as a grandparent or grandchild.
- F. **Gender Identity Harassment** – behavior that targets someone for offensive, hostile, degrading or insulting treatment because of their gender.

The following are examples of conduct that may constitute gender harassment:

- Using derogatory, gender-based terms;
- Making derogatory jokes about gender-specific traits or based on negative gender stereotypes;
- Suggesting that students of one gender should not engage in certain activities because of their gender;
- Impeding the educational progress of a person of one gender wither explicitly or implicitly, such as by questioning an individual's ability because of his/her gender or suggesting that it is abnormal for a person of that gender to hold a particular interest;
- Limiting or denying an individual of one gender access to educational opportunities;
- Using sexist humor as a classroom teaching technique;
- Using personal or College electronic communications to convey inappropriate gender-based remarks, pictures, or images; or
- Using verbal, graphic, or physical conduct which threatens, ridicules, or demeans an individual because of gender.

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- G. **Harassment** (for Sexual and Gender Identity Harassment, see specific definition) – verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, religion, ethnicity, national origin, age, disability, genetic information and veteran status, or any other legally protected status not listed herein, or that of his or her relative, friends, or associates, and has the purpose or effect of creating an intimidating, hostile, or offensive work or learning environment; has the purpose or effect of interfering unreasonably with an individual’s work or academic performance; or otherwise adversely affects an individual’s employment or educational opportunities.

Harassment may include but is not limited to:

- Threatening or intimidating conduct directed at another because of the individual’s protected status.
  - Jokes, name calling, or rumors based upon an individual’s protected status.
  - Ethnic slurs, negative stereotypes and hostile acts based on an individual’s protected status.
- H. **Hostile Environment** – conduct evaluated from the perspective of a reasonable person in the alleged victim’s position considering all the circumstances. The more severe the conduct, the less need there is to show repetitive series of incidents (particularly if the conduct is physical). A single or isolated incident of sexual violence may create a hostile environment.
- I. **Responsible Employee** – a College employee who has the authority to take action to redress sexual harassment/misconduct; who has been given the duty of reporting incidents of sexual harassment/misconduct or any other misconduct by students to the Title IX coordinator or other appropriate designee; or who a student reasonably believes has this authority or duty. The College’s Responsible Employees include all College administrators (Deans, Directors, Coordinators and Vice Presidents). If a student is unsure of someone’s duties and ability to maintain one’s privacy, the student should ask the person before he/she speaks to him/her.
- J. **Sexual Assault** – subjecting any person to contact or behavior of a sexual nature or for the purposes of sexual gratification without the person’s expressed and explicit consent.

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- K. **Sexual Harassment** – physical contact and/or conduct that creates an unwelcome or hostile environment. It includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature when submission to the conduct is made a term or condition of an individual’s employment or academic performance (either implicitly or explicitly), when submission to or rejection of the conduct is used as the basis for employment or educational decisions affecting the individual, or when the conduct is sufficiently severe, persistent, or pervasive to interfere with an individual’s work or academic performance or to create an intimidating, hostile, or offensive working or learning environment. Occasional compliments of a socially acceptable nature do not constitute sexual harassment.

Sexual harassment may include but is not limited to:

- Physical assault, including rape, or any coerced sexual relations.
  - Subtle pressure for sexual activity or for a relationship that takes on a sexual or romantic coloring, thereby exceeding the limits of healthy relation.
  - Any demeaning sexual propositions.
  - Unnecessary touching in any form.
  - Sexually explicit or suggestive remarks about a person’s physical attributes, clothing, or behavior.
  - Sexually stereotyped or sexually charged insults, humor, verbal abuse, or graffiti.
  - Any sexually inappropriate behavior that prevents an individual from participating in their employment, academic performance, or in any functions of the college.
- L. **Sexual Violence** – physical acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to the person’s age or use of drugs or alcohol or because an intellectual or other disability prevents the person from having the capacity to give consent).
- K. **Stalking** – engaging in a course of conduct directed to a specific person that would cause a reasonable person to fear for his/her safety or the safety of others or suffer substantial emotional distress by placing that person in fear of death, bodily injury or continued harassment.

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## II. REPORTING

All members of the College community are expected to take appropriate action to prevent discrimination, harassment and sexual-based violence. All Responsible Employees are required to report such alleged acts to the appropriate College officials. All Responsible Employees receiving a complaint of discrimination, harassment or sexual based violence shall immediately refer the complaint to the appropriate person. For acts of sexual based violence, Responsible Employees shall inform the Complainant of the right to contact law enforcement.

If a student or employee wishes to keep the details of an alleged incident confidential, he/she should speak with a Confidential Employee, health service provider or off-campus counselors in order to maintain confidentiality. Employees may choose to access confidential counseling services through the College's Employee Assistance Program free of charge.

Reports of sexual harassment and sexual-based violence should be made to the College's appropriate Title IX Coordinator:

**Student Contact**

Cheryl Contino Conner  
*Dean of Students*  
828.339.4245

**Employee Contact**

Lisa Sizemore  
*Director of Human Resources*  
828.339.4280

447 College Drive, Sylva NC 28779

The Title IX Coordinators shall receive annual training on issues related discrimination, harassment and sexual-based violence and how to conduct a fair and impartial investigation that protects alleged victims and promotes accountability.

Reports of disability discrimination should be made to the College's Director of Disability (for student matters) or the College's Director of Human Resources (employee matters):

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**Disability Services Coordinator**

Peter Buck  
828.339.4243

**Director of Human Resources**

Lisa Sizemore  
828.339.4280

447 College Drive, Sylva NC 28779

All other issues raised hereunder should be reported to the Executive Vice President for Instruction and Student Services (student matters) or the College Director of Human Resources (employee matters).

For the remainder of these Procedures, the person who receives an initial report shall be referred to the "Coordinator."

**III. INITIAL INVESTIGATION**

Members of the College community are encouraged, but not required, to resolve issues informally and may attempt to do so directly with the other party or with the assistance of a supervisor or other College official. In circumstances in which informal process fails or is inappropriate, in the cases of sexual harassment and sexual-based violence, or in which the Complainant requests formal procedures, the complaints will be investigated promptly, impartially and thoroughly according to the following procedures:

- A. Individuals filing complaints ("Complainants") are urged to do so in writing as soon as possible but no later than thirty (30) days after disclosure or discovery of the facts giving rise to the complaint. Complaints submitted after the thirty (30) day period will still be investigated; however, Complainants should recognize that delays in reporting may significantly impair the ability of College officials to investigate and respond to such complaints. The Coordinator shall fully investigate any complaints and will, as needed and if the complaint also involves an employee, collaborate with the College's Director of Human Resources. During the course of the investigation, the Coordinator may consult with other relevant College administrators and the College Attorney.
- B. During the investigation, the Coordinator shall meet with the Complainant and the alleged Perpetrator and give each party an equal opportunity to provide evidence, including informing the Coordinator of any potential witnesses. Both parties will be provided access to any information provided by the other in accordance with any federal or state confidentiality laws.
- C. During the investigation process, the Coordinator may implement temporary

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measures in order to facilitate an efficient and thorough investigation process as well as to protect the rights of all parties involved. The temporary actions include, but are not limited to: reassignment of class schedules; temporary suspension from campus (but be allowed to complete coursework); for employee situations, temporary administrative leave with pay; or the directives that include no contact between the involved parties.

- D. A confidential file regarding the complaint shall be maintained by the Coordinator. To the extent possible, the College will keep all information relating to the complaint and investigations confidential; however, to maintain compliance with the Clery Act, both parties will be informed of the outcome of any institutional proceeding alleging sexual harassment or sexual-based violence.
- E. The Coordinator shall make every effort to conclude the investigation as soon as possible but no later than thirty (30) calendar days. If nature of the investigation requires additional time, the Coordinator may have an additional ten (10) calendar days to complete the investigation. The Coordinator shall notify the parties of this extension.
- F. Upon making the complaint, Complainants alleging sexual harassment and sexual-based violence will be immediately notified that they have to right to seek additional assistance from law enforcement and have the right to seek, among other things, judicial no-contact, restraining and protective orders. Complainants will also be notified of available counseling services and their options of changing academic situations.

#### **IV. DETERMINATION AND APPEAL**

##### **A. Coordinator's Report**

The Coordinator shall prepare a report of his/her investigation and review the report with both the Complainant and the alleged Perpetrator and, if appropriate, implement any corrective and/or disciplinary action based on the preponderance of the evidence. Appropriate disciplinary action shall depend upon the seriousness of the misconduct and may include: a warning, written reprimand, suspension, expulsion from College property, termination and/or denial of access to College services or programs.

Any disciplinary action will be implemented immediately and shall not be tolled pending an appeal.

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## **B. Appeal to the President<sup>1</sup>**

If the Complainant or alleged Perpetrator is dissatisfied with the Coordinator's determination, s/he may appeal to the President within ten (10) calendar days upon receipt of the Coordinator's report.

Upon receipt of the appeal, the President shall convene a Review Committee ("Committee") to hear the matter and provide a non-binding recommendation.

### **1. Committee Membership**

The Committee shall be composed of the following members: i) one faculty and one staff member; and ii) and one senior administrator who will serve as the Chair. All Committee members shall be appointed by the President and shall receive training on conducting hearings for this process.

### **2. Hearing Procedures**

- a. The Committee must meet within ten business days of receipt of the appeal. At least five business day prior to the date set for the hearing, the Chair shall send notification to the Complainant and alleged Perpetrator the time and place of the hearing and the members of the Committee.

At least two days prior to the hearing, the parties will notify the Chair whether or not they will be represented by legal counsel. Failure to notify the Chair regarding legal counsel could result in the hearing being continued until such time that the College can have its legal counsel present. Should the College's legal counsel attend, he/she shall serve as the procedural officer for the hearing.

Also, at least two days prior to the hearing, the Complainant and alleged Perpetrator have the right to request, in writing, that the President disqualify any member of the Committee for prejudice or bias. The request must contain specific reasons.

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<sup>1</sup> In the event the College's President is the alleged victim or perpetrator, the determination based on the Review Committee's recommendation shall be made by a committee of the Board chaired by the Board Chairperson. All roles assigned to the President in this situation shall be completed by the Executive Vice President.

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The President shall consider the matter and if such disqualification occurs, the President shall replace the disqualified member with an individual from the same employment category.

- b. The following due process rights shall apply to the hearing:
- i. Each party has a right to have legal counsel and/or an advocate present. The role of the legal counsel or advocate is solely to advise the individual. Except for a closing argument, the legal counsel or advocate shall not have the right to address the Committee.
  - ii. Each party has the right to produce witnesses on their behalf.
  - iv. Each party has the right to present testimonial and documentary evidence.
  - vi. Each party has the right to be present and hear the witnesses presented for both sides.
  - vii. Each party has the right to testify or to refuse to testify without such refusal being detrimental.
- c. The following hearing procedures shall apply:
- i. Hearings before the Committee shall be confidential and shall be closed to all persons except the parties; legal counsel and/or advocate; and Committee members and the College attorney. Witnesses shall only be present in the hearing room when giving their testimony.
  - ii. The Complainant shall have an opportunity to make an opening statement and present evidence and witnesses to the Committee. Committee members may ask questions to the witnesses.
  - iii. The alleged Perpetrator will then have an opportunity to make a short opening statement and present evidence and witnesses to the Committee. Committee members may ask questions to the witnesses.
  - iv. Each side will have an opportunity to make a short, closing argument with the Complainant going first.
  - v. The hearing will be recorded.
  - vi. Upon completion of a hearing, the Committee shall meet in closed session. The College Attorney may be

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present to provide the Committee with legal advice. Based on a preponderance of the evidence standard, the Committee shall review the evidence and make a written, non-binding recommendation to the President within five business days. The parties shall also receive a copy of the non-binding recommendation.

- d. Within five business days after receipt of the Committee's non-binding recommendation, the President will render a final written decision. Both parties shall receive a copy of the decision.

## **V. PROTECTION AGAINST RETALIATION**

The College will not in any way retaliate against an individual who makes a report of discrimination, harassment or sexual-based violence in good faith or who assists in an investigation. Retaliation includes, but is not limited to: any form of intimidation, disciplinary action, reprisal or harassment. Retaliation is a serious violation and should be reported immediately. The College will take appropriate action against any employee or student found to have retaliated against another in violation of these procedures.

## **VI. EMPLOYEE AND STUDENT RELATIONSHIPS**

Romantic or sexual relationships between College employees and students are prohibited if the employee and the student have an academic relationship. Academic relationships include any activities in which the employee is a direct or indirect supervisor or instructor for the student, as in a classroom or lab, or is a sponsor for any College activity involving the student, including work study or organizational/club/sport activities. This prohibition shall continue until the student or the employee is no longer affiliated with the College. Employees engaging in inappropriate relationships will be subject to disciplinary action up to and including termination of employment. Students engaging in inappropriate relationships may be subject to disciplinary action up to and including expulsion.

Romantic or sexual relationships between College employees and students not in an academic relationship that impairs the College employee's effectiveness, disrupts the workplace/learning environment, and/or impairs the public confidence in the College will be subject to disciplinary action up to and including termination of employment or expulsion from the College.

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## **VII. SUSPENDING PROCEDURES**

In cases of emergency or serious misconduct, the College reserves the right to suspend this process and may enact appropriate action for the welfare and safety of the College community.

## **VIII. STUDENT AND EMPLOYEE EDUCATION AND ANNUAL TRAINING**

All new students and all employees shall be required to participate in a primary prevention and awareness program that promotes awareness of discrimination, harassment and sexual-based violence. This program will be held annually at the beginning of each fall semester.

At this annual training, students and employees must receive training in the following areas:

1. Information about safe and positive options for bystander intervention skills;
2. What “consent” means with reference to sexual activities.
3. Risk reduction programs so students recognize and can avoid abusive behaviors or potential attacks;
4. How and to whom to report an incident regarding discrimination, harassment and sexual-based violence;
5. The importance of preserving physical evidence in a sexual-based violent crime; and
6. Options about the involvement of law enforcement and campus authorities, including the alleged victim’s option to: i) notify law enforcement; ii) being assisted by campus authorities in notifying law enforcement; iii) declining to notify law enforcement; and iv) obtaining “no-contact” or restraining orders.

Each year, all students and employees will receive an electronic copy of these Procedures sent to their College email address of record. These Procedures will be maintained online in the College’s website and a hard copy will be kept on file (in English and Spanish) in the Coordinator’s office. Other translations will be made available upon request.

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Adopted: April 1999

Cross Reference: 4.03.02 – Employee Code of Conduct;  
6.03.01 – Campus Safety Reporting – Clery Act;  
6.03.02 – Standards of Student Conduct; Administrative Procedures  
6.03.02.02 – Discipline and Appeal Procedure for Non-Academic Violations

Revised: April 28, 2015  
July 28, 2015