



## Gender-based Discrimination Sexual Harassment and Sexual Misconduct Procedures

Mitchell Community College is committed to providing a safe environment in which students can pursue their education free from the effects of gender-based discrimination sexual harassment and sexual misconduct, which includes sexual harassment and sexual assault. Therefore, the College seeks to educate students, faculty and staff about these issues and to provide resources for those students who believe they have experienced such behavior. The College reserves the right to respond with whatever measures it deems appropriate to prevent gender-based discrimination sexual harassment and sexual misconduct to preserve the safety and well-being of its students. The College strives to ensure that educational and employment decisions are based on individuals' abilities and qualifications.

As a recipient of Federal funds, Mitchell Community College is required to comply with Title IX of the Higher Education Amendments of 1972 ("Title IX"), which prohibits discrimination on the basis of sex in education programs or activities. The procedures included herein are intended to work in tandem with the Title IX policy of the College.

These procedures cover a broad range of behaviors that will not be tolerated in the Mitchell Community College community. Any behavior deemed to constitute gender-based discrimination, sexual harassment and sexual misconduct will be treated as a serious matter and will subject an individual to appropriate disciplinary and/or criminal actions.

### 1. DEFINITIONS

**Student** refers to an individual who has gained admission with the College, either full or part-time in a credit or continuing education course or courses who has either paid or made arrangement for payment of tuition and fees, unless otherwise exempt from payment.

**Sexual harassment** is any unwelcome sexual advance, request for a sexual favor and/or any other verbal or physical conduct of a sexual nature when:

1. Submission or rejection of such conduct is made implicitly or explicitly a term or condition of an individual's employment, academic standing, instruction or education;
2. Submission to or rejection of such conduct by an individual is used as the basis for evaluation in making employment or academic decisions affecting the individual; and/or
3. Such conduct has the purpose or effect of substantially interfering with an individual's employment, academic performance or living conditions by creating any intimidating, hostile or demeaning environment.

Examples of conduct that may constitute sexual harassment include, but are not limited to:

- unwelcome sexual propositions, invitations, solicitations and flirtations;
- unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance or sexual activities;
- the unwelcome use of sexually degrading language, jokes or innuendoes;
- unwelcome suggestive or insulting sounds or whistles;
- obscene phone calls;
- unwelcome and inappropriate touching, patting, pinching or obscene gestures

**Sexual violence** is any sexual act or attempt to obtain a sexual act by violence or coercion, acts to traffic a person or acts directed against a person's sexuality, regardless of the relationship to the Reporting party.

**Sexual assault** is any unwanted sexual contact in which a person is threatened, coerced or forced to comply against his/her will. Sexual assault includes all forms of rape, attempted rape and nonconsensual sexual physical contact.

**Rape** is any type of forced intercourse that is perpetrated against the will of a person and may involve physical violence, coercion or the threat of harm. Rape does not require that a person explicitly say "no" to his or her attacker. Sometimes people are unable to give consent because they are unconscious, asleep or under the influence of alcohol or drugs.

**Dating Violence** is committed by a person who is or has been in a social relationship of a romantic or intimate nature and such a relationship shall be determined based on consideration of the following factors: the length of the relationship; the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

**Sexual Misconduct** is a broad term encompassing all of the conduct defined in this procedure above. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women and it can occur between people of the same or different gender.

Consent is mandatory in every kind of sexual activity. Without consent, any sexual act is sexual misconduct. Consent requires an outward demonstration, through understandable words or actions, of a clear willingness to engage in sexual contact.

**Stalking** refers to engaging in a course of conduct directed at a specific person that would cause an individual to fear for their own safety; or the safety of others.

**Retaliation** is any adverse reaction taken against a person for alleging harassment, supporting a party bringing a grievance, or for assisting in providing information relevant to a claim of harassment and will be investigated immediately. Retaliation includes, but is not limited to intimidating, threats, menacing behavior, and/or coercion.

**Reporting Party:** An individual who reports to the College a concern regarding possible sexual or gender-based misconduct.

**Respondent:** An individual who has been accused in a complaint of committing sexual or gender-based misconduct.

## **2. BYSTANDER INTERVENTION**

The College encourages all faculty, staff and students to take reasonable actions to prevent or stop an act of Gender-Based Discrimination, Sexual Harassment and Sexual Misconduct or associated incidents of Retaliation or Intimidation. Bystander Intervention is a behavior whereby an individual or individuals utilize safe and positive options in emergency or non-emergency situations to prevent harm or intervene when there is a risk of sexual assault, dating violence, domestic violence, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene when it is safe to do so. **The most basic and best action an active bystander can take is to call Campus Safety and Security or local law enforcement at 911.**

## **3. REPORTING PROCEDURES**

**REPORTING TO THE COLLEGE:** Mitchell Community College is committed to fostering an environment that promotes prompt reporting of all types of Gender-based discrimination, Sexual Harassment and/or Sexual Misconduct. This includes timely and fair resolution of all reports. All parties are entitled to fundamental fairness in the handling of reports. Individuals are encouraged to report any incidents of Gender-based discrimination, Sexual Harassment and/or Sexual Misconduct made to one of the Title IX Coordinators identified below.

While there is no time limit imposed on making reports under this procedure, individuals are encouraged to report alleged Gender-based discrimination Sexual Harassment and/or Sexual Misconduct immediately in order to maximize Mitchell Community College's ability to obtain evidence and conduct a prompt and thorough investigation. Failure to promptly report alleged Gender-based discrimination, Sexual Harassment and/or Sexual Misconduct may result in the loss of relevant evidence and may impair Mitchell's ability to enforce this procedure.

**TITLE IX COORDINATOR(S):** All inquiries or reports made in connection with Title IX should be directed to one of the Title IX Coordinators identified below. These Coordinators will be available to meet with employees or students regarding issues relating to Title IX and these procedures.

**Denise Barnhardt**, Title IX Coordinator, MB-306; (704) 878-5409, [dbarnhardt@mitchellcc.edu](mailto:dbarnhardt@mitchellcc.edu)

**Ann Wright**, Deputy Title IX Coordinator, SSC-205A; (704) 878-3295, [asaunders@mitchellcc.edu](mailto:asaunders@mitchellcc.edu)  
500 West Broad Street, Statesville, NC 28677

**REPORTING TO LAW ENFORCEMENT:** Because Sexual Misconduct may also constitute criminal activity, Mitchell Community College encourages individuals to report alleged Sexual Misconduct promptly to law enforcement agencies, if appropriate. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this procedure, criminal investigations or reports are not determinative as to whether a violation of this procedure has occurred. The filing of a complaint of Sexual Misconduct under this procedure is independent of any criminal investigation or proceeding.

**REPORT TO EXTERNAL AGENCIES:** In addition to the College's internal remedies, members of the campus community should also be aware that the Office of Civil Rights investigates and prosecutes complaints of prohibited gender-based discrimination. This agency may be contacted as follows:

**Office for Civil Rights (OCR), Headquarters**  
400 Maryland Avenue, SW Washington, DC 20202-1100  
Customer Service Hotline: (800) 421-3481  
TDD: (877) 521-2172  
Fax: (202) 453-6012  
Email: OCR@ed.gov  
Web: [www.ed.gov/ocr](http://www.ed.gov/ocr)

### **RESPONSIBLE EMPLOYEES**

The following positions have been designated by the College to be Responsible Employees: Board of Trustees Members; the President; the Vice Presidents; the Deans; the Directors; Coordinators; Supervisors; all Admissions Staff; all Campus Safety and Security Staff; all Staff and Faculty. All Responsible Employees with knowledge of any incident that may be a violation of the Title IX Policy shall immediately report such incident to the Title IX Coordinator.

### **CONFIDENTIAL EMPLOYEES**

If an individual desires that details of an incident be kept confidential, they should speak with our on-campus confidential employee to seek advice. This employee is not required to tell anyone unless there is cause for fear for an individual's safety or the safety of others. The College's confidential employee is: **Myra Lewis**, Director of Advising, SSC-100; (704) 978-1309, [mlewis@mitchellcc.edu](mailto:mlewis@mitchellcc.edu)

**Reporting Party Rights:** Reporting parties are afforded the following rights in the College's investigative and resolution process:

- To be treated with respect, dignity and sensitivity throughout the process;
- To seek and receive appropriate support services at the College;
- To the presence of an advisor and/or legal counsel throughout the process;
- To confidentiality and protection under the Family Education Rights and Privacy Act (FERPA) regarding students.
- The College will make all reasonable efforts to ensure preservation of privacy, restricting information to those with a legitimate need to know;
- To be informed of the College's Gender-Based Discrimination, Sexual Harassment, and Sexual Misconduct Procedure;
- To a prompt and thorough investigation of the allegations;
- To participate or decline to participate in the College's investigation. However, the College will determine an outcome with the information available pursuant to applicable proceedings;
- To refrain from making self-incriminating statements;
- To report incidents of criminal Sexual Misconduct to law enforcement if she/he wishes to do so;
- To understand that information collected in this process may be subpoenaed in criminal or civil proceedings.
- Entitled to be notified of case resolution.

**Respondent(s) Rights:** Respondents are afforded the following rights in the College's investigative and resolution process:

- To be treated with respect, dignity and sensitivity throughout the process;
- To seek and receive appropriate support services at the College;
- To the presence of an advisor and/or legal counsel throughout the process;
- To confidentiality and protection under the Family Education Rights and Privacy Act (FERPA) regarding students.
- The College will make all reasonable efforts to ensure preservation of privacy, restricting information to those with a legitimate need to know;
- To be informed of the College's Gender-Based Discrimination, Sexual Harassment, and/or Sexual Misconduct Policy;
- To a prompt and thorough investigation of the allegations;
- To participate or decline to participate in the College's investigation. However, the College will determine an outcome with the information available pursuant to applicable proceedings;
- To understand that information collected in this process may be subpoenaed in criminal or civil proceedings;
- To be notified of the resolution of case resolution the case against them.

## **CONFIDENTIALITY**

The privacy of individuals who make reports pursuant to this procedure, who are accused of violating this procedure or who are otherwise involved in the reporting or investigatory process, will be respected to the fullest extent possible. Likewise, information obtained during the course of Mitchell Community College's investigation and resolution of possible violations will be handled as confidentially as possible. Title IX requires Mitchell Community College to investigate and take reasonable action in response to the reported information, abiding by certain reporting obligations. Therefore, complete confidentiality cannot be guaranteed. Reports made to other Mitchell Community College employees must be referred to the Title IX Coordinators, who can discuss in greater detail issues regarding confidentiality.

## **AMNESTY**

Individuals may be hesitant to report conduct which they have experienced or witnessed, to participate in an investigation and/or grievance proceeding, or to speak truthfully because they fear College disciplinary action due to their own actions, i.e. consumption of alcohol or other drugs at or near the time of the incident. While the College does not condone underage drinking or drug use, the College may extend limited immunity from College sanctioning in the case of illegal drug and alcohol use to Reporting parties, witnesses and those reporting incidents and/or assisting the reporting parties of sexual offenses, provided that they are acting in good faith in such capacity.

## **RETALIATION**

Mitchell Community College prohibits retaliation against any individual who complains of a violation of this procedure or assists in providing information about a complaint made in connection with this procedure.

## **INTERIM MEASURES**

Upon learning of an incident of Sexual or Gender-Based Misconduct involving a faculty, staff or student, the Title IX Coordinator, in consultation with appropriate administrators, will take immediate steps and interim measures to ensure the safety and well-being of the Reporting party, such as the ability to alter academic schedules, withdraw from/retake a class without penalty, and access academic support (i.e. tutoring). Additional Interim Measures that may be implemented while the investigatory process is pending may include the issuance of no contact orders.

The College may implement such measures regardless of whether a written report has been made (with either campus officials or law enforcement agencies) or whether an investigation has commenced. Also, a Reporting party who has not reported the misconduct to a Title IX Coordinator(s), Campus Safety & Security officer or a Responsible Employee has the option to disclose the misconduct to a counselor or an off-campus Reporting party advocate, who in turn can request Interim Measures on the Reporting party's behalf from the College. Under this option, the Reporting party should be aware that when a counselor or advocate requests Interim Measures on their behalf from the Title IX Coordinator and discloses that the reason for the request is Gender-Based Discrimination, Sexual Harassment and/or Sexual Misconduct, the request might trigger the College's Title IX obligation to investigate. To the extent the counselor or advocate makes such a disclosure, but, consistent with the Reporting party's wishes, asks that the College not investigate or otherwise notify the alleged Reporting party of the report, the Title IX Coordinator will consider whether it can honor the request while still providing a safe and nondiscriminatory environment for all students, and take Interim Measures to protect the Reporting party as necessary.

## **4. INVESTIGATING REPORTS**

It is the goal of Mitchell Community College to provide for an adequate, reliable and impartial investigation of each report, including the opportunity for both the Reporting Party and Respondent to identify witnesses and evidence.

If the Title IX Coordinator determines that a formal Title IX Investigation is warranted to resolve a report of Sexual or Gender-Based Misconduct, the Title IX Coordinator will appoint an Investigator or an investigative team ("Investigator") who has specific training in investigating allegations of Gender-Based Discrimination, Sexual Harassment and/or Sexual Misconduct.

Mitchell Community College will investigate all possible violations of this procedure about which Mitchell Community College knows, or should have known, regardless of whether a complaint alleging a violation of this procedure has been filed and regardless of whether the conduct at issue actually occurred. Mitchell Community College's ability to investigate in a particular situation, or the extent of an investigation in any given situation, may be affected by any number of factors, including whether the reporting party is willing to file a complaint or participate in an investigation, the location where the alleged conduct occurred and Mitchell Community College's access to information relevant to the alleged or suspected violation of this procedure.

## **TIME FRAME FOR RESOLUTION**

The investigation and resolution of all reports or complaints of Gender-Based Discrimination, Sexual Harassment and/or Sexual Misconduct will generally be completed within 60 days. Extenuating circumstances, including, but not limited to, the complexity and severity of a complaint may arise that require the process to extend beyond 60 days.

This timeframe may be extended by the Title IX Coordinator for good cause based on factors such as, but not limited to, criminal investigations, schedule and availability of witnesses, holidays or semester breaks, and the complexity of the complaint. If the investigatory process cannot be completed within 60 days, the Title IX Coordinator will notify the Reporting Party and Respondent(s) of that fact and provide a timeframe for completing the investigatory process.

Any pending criminal investigation or criminal proceeding may have some impact on the timing of Mitchell's investigation, but the College will conduct its own investigation as soon as it is practicable under the circumstances. Mitchell Community College reserves the right to conduct its own investigation prior to the completion of any criminal investigation or criminal proceeding.

At the conclusion of the College's investigation, the Title IX Coordinator or their designee will prepare a summary of the outcome and will communicate this summary to the Reporting party and Respondent.

## **PREPONDERANCE OF THE EVIDENCE**

Preponderance of evidence is the required standard for determining a policy violation. Administrators charged with rendering a decision of policy violation must be convinced, based on the information provided, that a policy violation was more likely to have occurred than to not have occurred in order to find a Respondent responsible for violating a policy.

## **FINAL OUTCOME**

In accordance with this Procedure, Mitchell Community College is empowered to impose disciplinary sanctions for Gender Based Discrimination, Sexual Harassment, and/or Sexual Misconduct and any violations of Mitchell policies and procedures directly related to the alleged violations of this procedure. The imposition of college disciplinary action is independent of any action pending or taken in the courts.

## **REPORTS INVOLVING STUDENTS**

In matters involving students, where Mitchell Community College decides that disciplinary proceedings under Mitchell's Student Code of Conduct and the Student Rights, Responsibilities and Judicial Procedures may be appropriate as a result of the investigation, the investigation report and all supporting documentation and information will be forwarded to the Vice President for Student Services. The Vice President for Student Services will initiate formal proceedings in accordance with these procedures.

Alternatively, if Mitchell does not initiate formal proceedings on its own, either the Reporting student or the responding student may request in writing that:

- The investigation report and all supporting documentation and information be forwarded to the Vice President for Student Services and that formal proceedings be initiated.
- All written requests must provide as much information as possible, including the section of the Student Code of Conduct allegedly violated, and must be submitted within five (5) working days of receiving the determination from the Title IX Coordinator or his or her designee.
- At this point, the Vice President for Student Services will initiate steps in accordance with the Student Rights, Responsibilities and Judicial Procedures.
- The College President may choose to review the formal proceedings at his discretion.

## **REPORTS INVOLVING FACULTY, STAFF AND OTHER MEMBERS OF THE MITCHELL COMMUNITY COLLEGE COMMUNITY**

In matters where the Respondent is an employee of the College:

- the investigation report and all supporting documentation will be forwarded to Mitchell's Director of Human Resources
- A recommendation will be made regarding appropriate disciplinary action up to and including termination of employment.
- The reporting party will be informed generally of the responsive action taken. If the reporting party disagrees with the responsive action taken, they may appeal to President whose decision will be final as to appropriate responsive action.

## **SANCTIONS**

Not all forms of sexual misconduct are equally serious offenses, and the College reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The College will consider the concerns and rights of both the Reporting party and the Respondent. Should a Respondent accept responsibility for a Policy violation, or if it is determined that the preponderance of evidence establishes that it is more likely than not that the Respondent violated the Policy, the Title IX Coordinator will recommend an appropriate sanction in conjunction with the appropriate administrator.

The Administrative Officer must be a neutral and impartial decision-maker. Any Administrative Officer who has reason to believe they cannot make an objective determination they must recuse oneself from the process.

## **5. APPEALS**

Both parties have the right to appeal the finding within five business days upon receipt of the written notice. Disagreement with the finding and/or with the sanctions does not, by itself, represent grounds for appeals. **Legitimate grounds for an appeal are confined to:**

- those instances in which there was a demonstrable procedural error
- new evidence, not previously available, becomes available
- **If the Respondent is a student:** The written appeal shall be submitted to the Vice President for Instruction.
- **If the Respondent is a staff member, volunteer, or third party:** The written appeal shall be submitted to the President.
- **If the Respondent is a faculty member:** The written appeal shall be submitted to the Vice President for Student Services.

The Appeal Officer as noted above has five business days to respond to the appeal. Should the appeal be granted, grants an appeal, the appeal officer will notify the Title IX Coordinator of the error or new evidence, and the Title IX Coordinator will notify the appellate committee to meet to reconsider the case (within 14 business days) and render a new decision. The committee will determine support or non-support of the original action and provide a letter to both parties regarding their decision according to the evidence based upon the preponderance of evidence standard. The President of the College has optional review of the Appeal Committee's decision.

## **6. ANNUAL REPORT**

The Title IX Coordinator maintains and delivers an annual report to the Board of Trustees: (1) the number of reports or complaints received pursuant to this policy; (2) the categories of those involved in the allegations; (3) the number of policy violations found; and (4) examples of sanctions imposed for policy violations.

## **7. TRAINING**

There is initial and on-going Title IX prevention and awareness training, which includes training with respect to sexual assault offenses, required for members of the Mitchell Community College community according to the following schedule:

- All students—semester they enroll;
- New full-time faculty and staff—within six months of hire;
- All Responsible Employees—annually;
- All investigators and Appeal Hearing Officers—annually;
- Title IX Coordinator and Deputy Coordinators—annually;
- All Safety and Security employees officers—annually.