

Type: Board of Trustees Policy**Number: AOM – 1.33****Page 1 of 8**

Purpose

Sets forth Board of Trustees Policy regarding discrimination, harassment, and sexual misconduct as applied to faculty, staff, and students.

General Policy

Johnston Community College (JCC) is committed to providing a safe learning and working environment. In compliance with federal law, Johnston Community College has adopted policies and procedures to prevent and respond to incidents of discrimination, harassment and sexual misconduct including sexual assault, domestic violence, dating violence, and stalking. These guidelines apply to all members of the JCC community (students, faculty, and staff) as well as contractors and visitors.

The College shall consider as fundamental to the concepts of Academic Freedom and of Equal Opportunity that each member of the College be enabled to participate in the activities of this community and is committed to the principles of free inquiry and free expression. Vigorous discussion and debate shall be deemed as fundamental to the College, and this policy shall not be intended or interpreted to stifle freedom of expression.

The College seeks to provide an environment free of discrimination, harassment, or sexual misconduct because such conduct seriously undermines the atmosphere of trust and respect that is essential to a healthy work and academic environment. The conduct prohibited by this policy includes all unwelcome conduct (whether verbal, physical or visual) based on an individual's protected status, such as sex, gender (including gender identity and expression), color, race, creed, religion, national origin, age, disability, marital status, veteran status, genetic information or other protected group status as defined by law.

Individuals who violate this policy shall be subject to discipline up to and including discharge, suspension or expulsion, or other appropriate sanction. Individuals who the College determines more likely than not engaged in sexual misconduct are subject to penalties up to and including dismissal or separation from JCC, regardless of whether they are also facing criminal or civil charges in a court of law.

Policy Provisions**Definitions**

- A. Hostile Work Environment:** Hostile work environment is behavior that is severe or pervasive enough to create hostile or abusive work environment based on individual's protected status and offensive to a reasonable person.
- B. Discrimination:** Discrimination is unfair, unfavorable, or inequitable treatment of a person or a "class" of people based on protected characteristic(s) or status. Examples of unlawful discrimination include denying an individual a job or a promotion, or denying a student admission or the opportunity to participate in an educational activity because of his/her protected characteristic(s).
- C. Harassment:** Harassment is offensive and unwelcome behavior that interferes with the performance and effectiveness of an employee or student. It includes inappropriate and disrespectful conduct and communication. Harassment can take the form of, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work or academic performance.
- D. Sexual Harassment** - Sexual Harassment shall consist of unwanted sexual advances, requests for sexual favors and other visual, verbal or physical conduct of a sexual nature when:
 - It is implicitly or explicitly stated, implied or suggested that submission to, or rejection of, the conduct will be a factor in an academic, employment and/or evaluation decision, or permission to participate in a College activity; or
 - The conduct has the purpose or effect of interfering with an individual's academic or work performance by creating a hostile and unacceptable educational or work environment.

The determination of what constitutes Sexual Harassment shall depend upon the specific facts and the context in which the conduct occurs.

Forms of Sexual Harassment

Sexual Harassment may take many forms: it may be subtle and indirect or blatant and overt; it may be conduct affecting an individual of the opposite sex or conduct affecting an individual of the same sex; and, it may occur between peers or between individuals in a hierarchical relationship. The key question is always whether the conduct is unwelcome to the individual to whom it is directed, regardless of the intentions of the actor.

Sexual Harassment shall include sexual advances that are repeated and unwanted, even where they are exclusively verbal and not coercive, and may also include written harassment via notes, letters or electronic mail messages and displays on public work stations offending other users.

Coercive behavior, including suggestions that academic or employment reprisals or rewards would follow refusal or granting sexual favors, shall constitute gross misconduct and shall not be tolerated; a single incident shall be considered as grounds for discharge or expulsion.

Clarifications Regarding Consensual Relations and Sexual Harassment

Those employees who supervise or evaluate the work of others, both in academic and employment settings, must base their decisions on the merits, and must deserve the trust of persons affected by these decisions. To be effective, they must be perceived to make their decisions fairly and without favoritism.

There are special risks in any sexual or romantic relationship between individuals in unequal positions, such as instructor and student, or supervisor and employee.

Such relationships may undermine the real or perceived integrity of the supervision and evaluation provided, and the trust inherent particularly in the student-faculty relationship. They may, moreover, be less consensual than the individual whose position confers power believes. The relationship is likely to be perceived in different ways by each of the parties to it, especially in retrospect.

The College shall not adopt policy prohibiting consensual romantic or sexual relationships among faculty, staff or students. But position of the other may provide grounds for complaint when that relationship gives undue access or advantage, restricts opportunities or creates a hostile and unacceptable environment for others.

Furthermore, circumstance may change – consent at the outset to a romantic involvement does not remove grounds for a charge based upon subsequent unwelcome conduct.

If an employee feels harassed in a manner other than sexually, the employee should utilize the Employee Grievance and Appeals Policy for resolution outlined in PM 2.09.

- E. Sexual Misconduct:** Sexual misconduct includes a range of behaviors such as those defined below. In addition, any other conduct of a sexual nature that is nonconsensual or has the purpose or effect of threatening, intimidating, or coercing a person or persons (e.g. intimate partner violence) is defined as sexual misconduct. Both men and women may be perpetrators, as well as victims.
1. **Sexual Assault** - refers to any sexual contact directed against another person, forcibly and/or against the person's will; or not forcibly or against the person's will where the victim is incapable of giving consent, as well as incest or statutory rape.
 2. **Domestic Violence** - includes felony or misdemeanor crimes of violence committed by persons who:
 - are current or former spouses;
 - are persons of opposite sex who live together or have lived together;
 - are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For these purposes, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
 - have a child in common;
 - are current or former household members; and/or
 - are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For these purposes, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

NC General Statute § 50B-1

3. **Dating Violence** - refers to 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 following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship.
4. **Stalking** - occurs when an individual engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Definitions – The following definitions apply to the above:

- a) **Course of conduct** – Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- b) **Harasses or harassment** – Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.
- c) **Reasonable person** – A reasonable person in the victim's circumstances.
- d) **Substantial emotional distress** – Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

NC General Statute §14-277.3A

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 (i.e. pushing someone away or moving your body away from someone), 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:

- is forced, pressured, manipulated, or has reasonable fear that they will be injured if they do not submit to the act.
- is incapable of giving consent or is prevented from resisting due to physical or mental incapacity, which includes, but is not limited to, the influence of drugs or alcohol. This includes drugs such as GHB, Rohypnol and Ketamine that are often used to facilitate sexual assault and rape.
- has a mental or physical disability which inhibits his/her ability to give consent.

Reporting an Incident of Discrimination or Harassment

If an individual feels that he/she is being harassed by another employee, another student, a supervisor or a non-employee, the first step to take to correct the situation is to tell the person that the behavior is offensive and should stop. Behavior that offends one individual may not have been intended as harassment. Telling the individual that the behavior is offensive and to stop the behavior may resolve the problem.

If the harassing matter is not thereby settled or if the individual feels he/she cannot discuss the matter, or in cases of discrimination, the following steps should be taken.

Steps for Employees

1. Notify the supervisor of the situation, who shall be responsible for investigating and taking immediate, corrective and appropriate action;
2. If the individual cannot talk to or approach the supervisor about the matter, or if the harassment or discriminating behavior is coming from the supervisor, the individual may go Human Resources to investigate and take immediate, corrective and appropriate action; and
3. If at any point in the process, as preferred, the individual may go to the President who shall be expected to investigate the situation and take immediate, corrective and appropriate action.

Steps for Students

1. Incidents of discrimination and harassment are handled through the student disciplinary/grievance process and should be reported directly to the vice president of student services. The vice president will counsel with the student to determine the appropriate action.
2. If the grievance is not resolved after meeting with the vice president, the student will follow the remainder of the appeal/grievance process outlined in the college's Catalog and Student Handbook.

Reporting an Incident of Sexual Misconduct

Johnston Community College encourages any member of the JCC community who has experienced sexual assault, domestic violence, dating violence, or stalking, or knows of another member of the community who has experienced sexual assault, domestic violence, dating violence, or stalking to report the incident to the College.

If a JCC student, employee, or visitor, has experienced a sexual assault, domestic violence, dating violence, or stalking, they should immediately report the incident to JCC campus security at (919) 209-2568, (919) 634-0167, (919) 631-2433, or (919) 795-2381. An individual can also contact the campus operator at (919) 934-3051 to connect him/her with campus security. If there is an immediate threat, please dial 911.

Individuals may also make an in-person report. JCC campus security will assist all members of the JCC community by assessing the incident, advising the victim on how he or she can seek legal protection, and making the victim aware of medical, counseling, and other support services. If a reported incident did not occur on campus, JCC campus security can assist the victim in notifying the local police department with jurisdiction over the crime. In case of an emergency or ongoing threat, a victim should get to a safe location and call 911. Calling 911 will put you in touch with local police.

Employees who have experienced sexual assault, domestic violence, dating violence, or stalking may also report an incident to the Office of Human Resources in the Wilson Building C1023C or at (919) 209-2025. The director of human resources also serves as the college's Title IX coordinator.

Students who have experienced a sexual assault, domestic violence, dating violence, or stalking may also report an incident to the vice president of student services in the Wilson Building C1045D or by calling 919-209-2048. The vice president of student services also serves as the college's Title IX deputy coordinator for students.

These offices will provide victims of sexual assault, domestic violence, dating violence, and stalking with information about available support services and resources, and also assist any victim in notifying law enforcement, including the local police, if the victim elects to do so.

Victims are not required to report to area law enforcement in order to receive assistance from or pursue any options within Johnston Community College.

Reporting sexual assault, domestic violence, dating violence, and stalking to the police (including JCC campus security) does not commit the victim to further legal action. However, the earlier an incident is reported, the easier it will be for the police to investigate, if the victim decides to proceed with criminal charges.

Written Notification of Right and Options

Any student or employee who reports an incident of sexual assault, domestic violence, dating violence, or stalking, whether the incident occurred on or off campus, shall receive a written explanation of their rights and options as provided for under this policy. (See Attachment A)

These rights and options include the right(s) of a victim to:

- Be assisted by JCC campus security authorities or college personnel if reporting a crime to law enforcement
- Request the police or security remain at the scene until your safety is otherwise ensured
- Change academic, working, or parking situations to avoid a hostile environment
- Obtain or enforce a restraining order
- Have a clear description of JCC's disciplinary process, the rights afforded under this process, and know the range of possible sanctions up to and including suspension or expulsion
- Receive contact information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available both on-campus and in the community

Procedures Victims Should Follow

If an incident of sexual assault, domestic assault, dating violence, or stalking occurs, it is important to preserve evidence so that successful criminal prosecution remains an option.

The victim of a sexual assault should not wash, shower or bathe, douche, brush teeth, comb hair, or change clothes prior to a medical exam or treatment. If a victim has removed the clothing he or she was wearing during the assault prior to seeking medical treatment, that clothing should be placed in a brown paper, not plastic, bag and brought to the hospital when treatment is sought. If the victim is still wearing the clothes that he or she was wearing during an assault, he/she should bring a change of clothes with him/her to the hospital so that the clothes containing possible evidence can be preserved and examined for evidence of the crime.

Evidence of violence, such as bruising or other visible injuries, following an incident of sexual assault, or domestic or dating violence, should be documented by taking a photograph. Evidence of stalking, including any communications such as written notes, email, voice mail, or other electronic communications sent by the stalker, should be saved and not altered in any way.

On Campus and Off Campus Resources

Johnston Community College, the Town of Smithfield, and Johnston County, all offer other important resources to the victims of sexual assault, domestic assault, dating violence, or stalking, including medical treatment, counseling services, and advocacy that victims may wish to utilize.

The following JCC employees and on campus offices can assist members of the JCC community in considering their options and navigating through any resources or recourse they may elect to pursue.

A victim need not formally report an incident of sexual assault, domestic violence, dating violence, or stalking to law enforcement or Johnston Community College in order to access the following resources:

- Director of Human Resources, (919)209-2025
- Employee Assistance Program (EAP) (800) 633-3353
- Vice President of Student Services, (919) 209-2048
- Counseling, (919) 209-2128
- Vice President of Administrative Services, (919) 209-2051

Off Campus Resources include the following:

Harbor
PO Box 1903
Smithfield, NC 27577
Office: (919) 938-3566
Crisis: (919) 631-5478
Fax: (919) 938-4515
Website: www.harborshelter.org
E-mail: info@harborshelter.org

Johnston County Mental Health Center
521 N. Brightleaf Blvd.
Smithfield, NC 27577
Phone: (919) 989-5500

North Carolina Coalition against Sexual Assault
811 Spring Forest Road, Suite 900
Raleigh, NC 27609
Phone: (919) 871-1015
Fax: (919) 871-5895
Email: nccasa@nccasa.org
Website Address: <http://www.nccasa.org>

Information on Sexual Assault Centers:
<http://www.nccasa.org/need-help/nc-rape-crisis-centers>

Accommodations

Regardless of whether a student or employee reports an incident of sexual assault, domestic violence, dating violence, or stalking to law enforcement or pursues any formal action, if he/she reports such an incident to the College, Johnston Community College is committed to providing him/her as safe a learning or working environment as possible. Upon request, JCC will make any reasonably available change to a victim's academic, transportation, parking and/or working situation. When a reported incident of abuse involves more than one member of the JCC community, the College's director of human resources, vice president of student services, vice president of administrative services, or JCC's campus security may also issue a verbal warning prohibiting the individuals from contacting one another, either on or off campus. Employees may contact the Office of Human Resources (919)209-2025 and students may contact the vice president of student services for assistance.

JCC campus security will advise victims how to seek a restraining order from a criminal court that directs the accused to refrain from abuse and to leave the victim's household, building, school, college, or workplace.

Johnston Community College is committed to ensuring that orders of protection issued by courts are fully upheld on all College-owned, used, and controlled property. Therefore, if any member of the JCC community obtains an order of protection or restraining order, he/she should promptly inform JCC and provide JCC campus security with a copy of that order, so that the College can enforce it. Johnston Community College is also committed to protecting victims from any further harm, and if the College determines that an individual's presence on campus poses a danger to one or more members of the College community, JCC can issue a no trespass directive barring that individual from JCC property.

Confidentiality

Johnston Community College recognizes the sensitive nature of sexual assault, domestic violence, dating violence, and stalking incidents and is committed to protecting the privacy of individuals who report incidents of abuse, to the extent that doing so is permitted by law and consistent with the College's need to protect the safety of the community. Different JCC officials and personnel are able to offer varying levels of privacy protections to victims.

JCC requires all College employees, with the exception of licensed counselors, to share with the College's director of human resources or vice president of student services information they learn concerning a report of sexual assault, an incident of domestic or dating violence, or stalking, so that the college can investigate the incidents, track trends (including possible multiple reports involving the same assailant) and determine whether steps are needed to ensure the safety of the community. It is the victim's choice whether he/she wishes to participate in the investigation; however, the College may proceed with an investigation without the victim's participation if there is a concern for the safety of other members of the community.

Reports made to JCC campus security will be shared with the Title IX coordinator, who is the director of human resources, and/or deputy coordinator in all cases, and may also be made public (maintaining the victim's anonymity) and shared with the accused in cases where criminal prosecution is pursued. Reports received by the College concerning the abuse of a minor or juvenile must be reported to state officials in compliance with state law requiring mandatory reporting of child abuse. All members of the JCC community are required by College policy to report any instances of known child abuse or neglect to JCC Campus Security, and JCC Campus Security will in turn report such information to the appropriate state authorities.

Reports and information received by JCC's licensed counselors are considered legally protected or 'privileged' under North Carolina law. Those individuals will not share information they learn from victims with others within the institution (including the College's director of human resources or the vice president of student services or with any third party) except in cases of imminent danger to the victim or third party. Absent such circumstances of imminent danger, the only information that these employees will report to the College concerning incidents is statistical information, which does not identify the victim, so that the incident can be included in the College's crime reporting statistics that are reported in JCC's annual Clery Reports.

While federal law requires Johnston Community College to include certain reported incidents of sexual assault, domestic violence, dating violence, and stalking among its annual campus crime statistics, such information will be reported in a manner that does not permit identification of victims.

JCC Educational Programs

JCC is committed to increasing awareness and prevention of discrimination, harassment, and sexual misconduct through educational programming. Workshops throughout the year and new student and employee orientations are provided to address these issues. Furthermore, all new students and employees receive access to an online training module that is sent to their campus email that addresses Title IX and Campus SaVE Act requirements, which addresses the issues of sex discrimination and sexual violence, and outlines JCC's policies regarding these issues.

Policy Oversight: Student Services

Conduct Proceedings**For employees:**

If an employee feels that he/she is a victim of harassment, discrimination, or sexual misconduct by another employee, supervisor, student, or non-employee, the following steps are to be taken.

Responsibilities of Supervisors and Managers

Notify the supervisor of the situation, who shall be responsible for investigating and taking immediate, corrective and appropriate action. The supervisor will work expeditiously and fairly to address all allegations of harassment, discrimination, and sexual misconduct within their departments whether or not there has been a written or formal complaint. The supervisor must:

- Take all complaints or concerns of alleged or possible harassment, discrimination, or sexual misconduct seriously no matter how minor or who is involved.
- Ensure that harassment, discrimination, or sexual misconduct is immediately reported to HR so that a prompt investigation can occur. HR will notify the police if criminal activities are alleged.
- Take any appropriate action to prevent retaliation or prohibited conduct from recurring during and after any investigations or complaints.

Managers and supervisors who knowingly allow or tolerate harassment, discrimination, misconduct or retaliation, including the failure to immediately report such misconduct to HR, are in violation of this policy and subject to discipline.

Responsibilities of Human Resources

If the individual cannot talk to or approach the supervisor about the matter, or if the harassing or discriminating behavior or sexual misconduct is coming from the supervisor, the individual may go to Human Resources to investigate and take immediate, corrective and appropriate action. The Human Resources Director is responsible for:

- Ensuring that both the individual filing the complaint (hereafter referred to as the “complainant”) and the accused individual (hereafter referred to as the “respondent”) are aware of the seriousness of a harassment, discrimination, or sexual misconduct complaint.
- Explaining Johnston Community College’s discrimination, harassment, and sexual misconduct policy and investigation procedures to the complainant and the respondent.
- Exploring informal means of resolving complaints.
- Notifying the police if criminal activities are alleged.
- Arranging for an investigation of the alleged discrimination, harassment or sexual misconduct and the preparation of a written report.
- Submitting a written report summarizing the results of the investigation and making recommendations to designated college officials.
- Notifying the complainant and the respondent of the corrective actions to be taken, if any, and administering those actions.
- At any point in the process, as preferred, the individual may go to the president who shall be expected to investigate the situation and take immediate, corrective and appropriate action.

For Students:

A student who feels that they are a victim of discrimination, harassment or sexual misconduct and files a grievance or a student who is accused of any of this policy’s prohibited behaviors will be notified immediately and required to see the vice president of student services (or designee). If there is an imminent threat, a college official may temporarily suspend the student for up to 2 days in order to immediately address the concern. Students found responsible for having committed such a violation may face sanctions up to and including immediate suspension or expulsion from the College.

The vice president of student services (or designee) will investigate all allegations including interviewing the respondent, the complainant, any witnesses, and collecting or reviewing any relevant evidence before rendering a decision or sanction or referring the matter to the college’s Student Grievance Committee. The disciplinary appeals procedure and the student grievance procedure are outlined in the college’s Catalog and Student Handbook.

All conduct proceedings shall provide a prompt, fair, and impartial investigation, and resolution. In all investigatory and adjudication proceedings conducted by the College concerning charges of sexual misconduct, both the complainant and the respondent will be afforded the same process rights, including equal opportunities to have others present. This includes the right to be accompanied by an advisor of their choice. Both the complainant and respondent will also be afforded an equal opportunity to introduce evidence and identify witnesses. Both will be informed of the outcome of the disciplinary proceedings.

Notes: The lead investigator for student-on-student issues will typically be the Title IX deputy coordinator. If circumstances arise where it is inappropriate for this person to serve as the lead investigator, the responsibility will be assigned to another campus official trained in issues of sexual misconduct.

The lead investigator for employee-on-employee and employee-on-student issues will typically be the director of human resources. In these situations, the Title IX deputy coordinator will serve as the student advocate throughout the process. If circumstances arise where it is inappropriate for this person to serve as the lead investigator or advocate, the responsibility will be assigned to another campus official trained in issues of sexual misconduct.

Retaliation

No student or employee shall be subject to any form of reprisal or retaliation for having made a good faith complaint or for participating in an investigation of such complaint. Appropriate steps will be taken to protect students and employees from retaliation.