

**ALBION COLLEGE
POLICY AND PROCEDURES FOR ADDRESSING
COMPLAINTS OF SEXUAL HARASSMENT**

I. SCOPE

The Policy and Procedures for Addressing Complaints of Sexual Harassment (Policy) applies to complaints of sexual harassment based on the alleged conduct of any Albion College faculty member, staff member, or student. Any Albion College student, any employee of the College or the College itself may file a complaint of sexual harassment against a faculty member, staff member, or student under this Policy. In those instances based on the alleged conduct of a student who is also an employee of the College, the Vice President for Student Development and Dean of Studentsⁱ will determine whether the complaint will be addressed through the procedure for filing a complaint against a staff member or through the College Judicial Process.

II. POLICY

Albion College is committed to maintaining a living, learning, and working environment for students, faculty, and staff that is free of sexual harassment. Sexual harassment is contrary to the standards of the College community, and it is a barrier to fulfilling the College's academic mission. Sexual harassment is also illegal. It is prohibited in the employment context by Title VII of the 1964 Civil Rights Act, in the education context by Title IX of the Educational Amendments of 1972 and, in both employment and education contexts, by Michigan's Elliott-Larsen Civil Rights Act, adopted in 1976. It will not be tolerated at Albion College. All members of the College community have an obligation to participate in any investigation of a sexual harassment complaint.

Sexual harassment can be a very serious matter having far-reaching effects on the lives and careers of individuals. Intentionally false accusations can have similar impact. Both a person who sexually harasses another, and a person who knowingly and intentionally files a false complaint under this Policy, are subject to appropriate remedial action. An individual may engage in conduct of a sexual nature that may not be sufficiently severe, persistent, or pervasive to constitute sexual harassment as described below, but is nonetheless inappropriate. Such conduct may violate other College policies, and the College will take appropriate action.

III. DEFINITION OF SEXUAL HARASSMENT

For the purpose of determining whether a particular course of conduct constitutes sexual harassment under this Policy, the definition listed below will be used.

Unwelcome sexual advances, requests for sexual favors, and other oral or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, living environment, or participation in a College activity; or

2. Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a College activity; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's employment or educational performance or creating an intimidating, hostile, offensive, or abusive environment for that individual's employment, education, living environment, or participation in a College activity.

Sexual assault that includes any incidents of "criminal sexual conduct" as defined by Michigan law will not be tolerated by Albion College. In addition to potentially constituting an offense under the Albion College Sexual Assault Policy, an incident of alleged sexual assault may also constitute sexual harassment.

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

Unwanted sexual statements – sexual or "dirty" jokes, comments on physical attributes, spreading rumors about or rating others as to sexual activity or performance, talking about one's sexual activity in front of others, and displaying or distributing sexually explicit drawings, pictures, and/or written material. Unwanted sexual statements can be made in person, in writing, electronically (email, instant messaging, blogs, web pages, etc.), and otherwise.

Unwanted personal attention – letters, telephone calls, visits, pressure for sexual favors, pressure for unnecessary personal interaction, pressure for dates where a sexual/romantic intent appears evident but remains unwanted, and stalking.

Unwanted physical contact of a sexual nature or physical sexual advances – touching, hugging, kissing, fondling, touching oneself sexually for others to view, sexual assault, intercourse, or other sexual activity.

Conduct alleged to be sexual harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior. Although repeated incidents generally create a stronger claim of sexual harassment, one severe incident, even if isolated, can be sufficient.

This Policy addresses intentional and unintentional conduct. Sexually-related conduct forms the basis of a sexual harassment claim if a reasonable person, in view of all the surrounding circumstances, would consider it sufficiently severe, persistent or pervasive as to interfere unreasonably with academic, other educational, or employment performance or participation in a College activity or living environment.

Sexual harassment often occurs when one person has actual or apparent power or authority over another; however, it may also occur between individuals of equal status or rank within the College. It is also possible for a person who is not in a position of power or authority over another to sexually harass that person, such as a professor being sexually harassed by a student or a supervisor being sexually harassed by a supervisee. Sexual harassment can occur between persons of the same sex and persons of the opposite sex.

In the event of a complaint of sexual harassment, the College will in general, be unsympathetic to a defense based upon consent when the facts establish that a professional faculty-student, staff-student, or supervisor-employee power differential existed within the relationship.

Although sexual harassment as described and prohibited by this Policy includes a wide range of behaviors, it does not include certain discriminatory conduct even though that conduct may be otherwise unlawful, offensive, or prohibited by College policy. A finding of sexual harassment constitutes a violation of College policy.

IV. PROCEDURES

The College may deviate from these Procedures (e.g., processing a complaint during a break period) as necessary to achieve the goals of prompt, thorough, and effective complaint resolution in a procedurally fair manner with no unnecessary delays. The College recognizes that these types of matters can be difficult for all parties involved. As such, the College strives to complete the investigative phase within 60 calendar days. However, depending upon the nature and complexity of the investigation, investigations may be completed before or after this time frame.

A. Time Frame for Filing a Complaint

The College can take corrective action only when it becomes aware of problems. Therefore, the College encourages persons who believe that they have experienced or witnessed sexual harassment to come forward promptly and to seek assistance within the College. The College will work to achieve a fair and equitable resolution of all complaints of sexual harassment regardless of when the complaints are filed. Individuals also have the right to pursue a legal remedy for sexual harassment in addition to proceeding under this policy.

B. Lodging and Processing a Complaint Against a Student

An individual may file a complaint about alleged sexually harassing behavior by a student by contacting the Office of Campus Safety, Office of Residential Life, or the Student Development Office¹.

All complaints of alleged sexual harassment against a student will be referred to and managed according to the Albion College Judicial Process (including appeals). However, in those instances based on the alleged conduct of a student who is also an employee of the College, the Vice President for Student Development and Dean of Students¹ will determine whether the complaint will be addressed through the procedure for filing a complaint against a staff member or through the College Judicial Process. A complete description of the Judicial Process, including appellate procedures, is contained in the *Albion College Student Handbook*.

C. Lodging and Processing a Complaint Against a Faculty Member or Staff Member

Complaints about alleged sexually harassing behavior of a College faculty member or staff member should be made by contacting the faculty member's or staff member's immediate supervisor, Office of Human Resources, or Vice President/Provost of the division in which the staff member works. All complaints will be forwarded to the Director for Human Resources at which time a Complaint Intake Form (CIF) will be completed.

A complaint against a faculty member or staff member must be processed under this Policy. Therefore, a faculty member Complainant may not initiate or process a complaint utilizing the Faculty Grievance Procedures. The person(s) who brings forward a complaint of sexual harassment shall be designated as the Complainant(s) and the answering party shall be designated as the Respondent.

1. Investigation

The College shall investigate all complaints of alleged sexual harassment against a faculty member or staff member. The Director for Human Resources, Associate Provost, and Director for Campus Safety or their designees (the “Investigators”) shall perform the investigation. The Director of Human Resources shall ensure that there is male and female gender representation among the Investigators. Designees shall be appointed by the Investigator in consultation with the Senior Officer of the College who supervises an Investigator to be replaced.

The purpose of an investigation, that will include interviewing the parties and witnesses as appropriate, is to gather and assess evidence. The standard of proof used to determine the facts of the case will be a “preponderance of the evidence” standard (i.e., that which is believed is more likely than not to have occurred based on the information presented).

2. Outcome

At the conclusion of the investigation, the Investigators will prepare a written report of the investigation that will include a determination regarding the merit of the allegations. This will be the end of the Investigators’ involvement in the matter. Possible outcomes of an investigation are (1) a finding that the allegations are not warranted or could not be substantiated, (2) a finding that the allegations are substantiated and constitute sexual harassment or other inappropriate behavior, and, if so, referral to the appropriate administrator for appropriate remedial action. This report will be provided to the appropriate administrator who is the person who (a) serves on the President’s Administrative Council (PAC), and (b) is a Senior Officer of the College (e.g., Provost or Vice President). A copy of the report will also be provided to other College officials as necessary to ensure proper resolution and follow-up regarding the matter.

If sexual harassment or other inappropriate behavior is substantiated, the appropriate administrator makes the final determination of what, if any, remedial action will be taken. Remedial Action may include, but is not limited to, education, training, negotiated settlement of the complaint, a warning, a reprimand, a suspension, or termination of employment. The severity of the remedial action will depend on the frequency, duration, and/or severity of the offense, and any history of similar conduct. Prior to determining remedial action, the appropriate administrator will consult with the Director for Human Resources. In the case where the Respondent is a faculty member and dismissal for cause is being considered, the Dismissal for Cause section 2.14.5 of the *Albion College Faculty Handbook* will be followed.

In all cases including those that fall under dismissal for cause, the appropriate administrator will communicate the finding and remedial action (if applicable) in a letter to the Respondent. This administrator will communicate the finding in a letter to the Complainant as well as a description of the remedial action that the administrator has deemed appropriate when there has been a finding of sexual harassment pursuant to this Policy. These letters and the Investigators’ report

are kept on file by the appropriate administrator. In cases where the Respondent is found responsible, a copy of the letter to the Respondent will also be filed in the Respondent's Human Resources Office personnel file. The Investigators' report will be kept on file in the Human Resources office.

3. Appealing the Outcome

Appeals by bargaining unit employees shall be processed in accordance with the grievance procedure outlined in the applicable Labor Agreement.

A Respondent faculty member has the right to one appeal in accordance with the "Faculty Grievance Procedures: Procedure for Type 3 Grievances" in the *Albion College Faculty Handbook 2.15.7*.

All other staff members have the right to one appeal of the Finding(s) and/or Sanction(s) to the appellate administrator. The appellate administrator is the direct supervisor of the appropriate administrator or designee who serves on PAC. Appeals will only be considered when based on at least one of the four criteria listed below.

- There were Policy process procedural errors that substantially affected the rights of the Respondent;
- New evidence has been discovered that is of a character directly affecting the decision;
- The decision is incompatible with the evidence; and/or
- The penalty is excessive.

The appellate administrator communicates the appeal decision in writing to the Respondent, Complainant, PAC appropriate administrator, and Director for Human Resources.

Appeals will be submitted in writing to the appellate administrator within ten (10) business days of receiving the written final determination.

D. Advocacy

Investigators do not function as advocates for Complainants or Respondents. Investigators can, however, identify support resources for Complainants and Respondents.

E. Support Persons

During the investigative process, the person filing the complaint or the person against whom the complaint is filed may have a support person present. This person must be a full-time student, full-time faculty member, or full-time staff member who is not an attorney and is not a witness to the behavior in question. A support person may be present during interviews or other meetings related to this procedure, but may not participate or interfere through his or her presence in the investigative process.

F. College Action

The College may assume the role of a Complainant and pursue a report or complaint of sexual harassment. The College may respond to complaints or reports by persons external to the College community about alleged sexually harassing conduct by College faculty members, staff members, or students.

G. Anonymous Complaints

The College may not be able to resolve a complaint filed anonymously unless sufficient information is furnished to enable the College to conduct a meaningful and fair investigation.

H. Retaliation

Retaliation against a person who reports, complains about, or participates in an investigation or other procedures for addressing complaints of a sexual harassment allegation will not be tolerated. Persons should notify the Director for Human Resources or Director for Campus Safety in a prompt manner if they believe they have been retaliated against so that the behavior can be investigated. If the College determines retaliation has occurred, then an individual who retaliated against someone who participated in any part of the procedures will be subject to appropriate remedial action.

I. Confidentiality

Sexual harassment complaints will be handled in a confidential manner to the extent possible and consistent with principles of due process.

J. Conflict of Interest

A conflict of interest is a significant professional or personal involvement with the facts or the parties to a dispute. Any participant or administrator who has a conflict of interest in a dispute covered by these procedures, or a concern about a conflict on the part of another, will report it to the Director for Human Resources. The Director for Human Resources will decide how to address the situation. If there is a conflict of interest involving the Director for Human Resources, the Director's supervisor will decide how to address the situation. If there is a conflict of interest involving the PAC appropriate administrator, the President will decide how to address the situation. If there is a conflict of interest involving the President, the Chair of the Board of Trustees will decide how to address the situation.

Approved by the Board of Trustees (May 13, 2011)ⁱⁱ

ⁱ In 2019, the Division of Student Affairs was renamed the Division of Student Development. The Vice President for Student Affairs and Dean of Students position was renamed Vice President for Student Development and Dean of Students. References to the division, office, and vice president in this Policy have been updated to reflect these changes. (July 29, 2019)

ⁱⁱ Albion College acknowledges that best practices, which include state and federal laws and/or regulations, continue to change, e.g., 2013 Reauthorization of Violence Against Women Act (VAWA). Consequently, if College policies and procedures conflict with or are not in line with current best practices, then current best practices, including state and federal laws and/or regulations, will take precedence over conflicting College policies and procedures. (February 13, 2016)