

## AMERICAN BAPTIST COLLEGE

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### **Prohibition of Discrimination and Harassment (including, but not limited to, acts covered by Title IX of the Educational Amendments of 1972) & Complaint and Investigation Procedure**

#### **I. PURPOSE**

The purpose of this policy is to provide for the orderly resolution of complaints of discrimination or harassment on the basis of race, color, religion (as applicable), creed, ethnic or national origin, sex, sexual orientation/gender identity expression, disability, age (as applicable), status as a covered veteran, genetic information, and any other category protected by federal or state civil rights laws that apply to ABC. Fair and prompt consideration shall be given to all complaints in accordance with the procedures set forth below.

#### **II. SCOPE**

All employees (including faculty members) and students shall be knowledgeable of policies and guidelines concerning discrimination and harassment. Any employee, applicant for employment or student who believes he/she has been subjected to or witnessed discrimination or harassment as defined by this policy may utilize these procedures. In addition, a third party (including but not limited to contractors, vendors, and visitors) may also utilize these procedures if he/she believes that he/she has been subjected to or witnessed discrimination or harassment as defined by this policy and the conduct has a reasonable connection to ABC.

Former employees or students may file complaints concerning conduct prohibited by this policy which took place during their time of employment or enrollment, provided the complaint is timely filed pursuant to [Section VII.B.2](#) of this policy, and the conduct has a reasonable connection to ABC.

All faculty members, students, and staff are subject to this policy. Any faculty member, student or staff member found to have violated this policy by engaging in behavior constituting discrimination or harassment will be subject to disciplinary action which may include dismissal, expulsion or termination, or other appropriate sanction.

In addition, contractors, vendors, and other third parties are also subject to this policy and are expected to comply with the requirements set forth herein. Any contractor, vendor, or other third party who fails to comply with this policy is subject to all remedies available under any applicable contract and subject to permanent removal from the ABC campus or all ABC controlled properties.

The procedures set forth in this policy do not only apply to conduct that occurs on campus and/or on property controlled by ABC. If a complaint is filed under this policy, it will be investigated regardless of whether the conduct occurred off of the College's grounds in order to determine whether the continuing effects of the off-campus conduct are having adverse effects on ABC's educational environment.

### **III. MANDATORY REPORTING AND COOPERATION**

Using the procedures outlined in [Section VII](#) below, faculty and staff must promptly report, to the appropriate institutional contact, any complaint or conduct that might constitute discrimination and/or harassment as defined by this policy, whether the information concerning a complaint is received formally or informally. Failure to do so may result in disciplinary action up to and including termination.

All faculty and staff members are required to cooperate with investigations of alleged discrimination or harassment. Failure to cooperate may result in disciplinary action up to and including termination. Students are also required to cooperate with these investigations and failure to do so may result in disciplinary action up to and including expulsion.

### **IV. MANDATORY TRAINING**

Because the courts have imposed strict obligations on employers with regard to discrimination and harassment, ABC will offer periodic training for employees regarding conduct that could violate this policy. All employees, including faculty members, are expected to participate in this training. Further, all faculty members, students and staff are responsible for taking reasonable and necessary action to prevent and discourage all types of discrimination and harassment.

### **V. DISCRIMINATION AND HARASSMENT PROHIBITED**

ABC intends to fully comply with the applicable provisions of federal and state civil rights laws, including but not limited to, Executive Order 11246, as amended; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; the Vietnam Era Veterans Readjustment Act of 1974, as amended; the Equal Pay Act of 1963, as amended; Title VII of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments of 1972, as amended; the Age Discrimination in Employment Act of 1967; the Age Discrimination Act of 1975; the Pregnancy Discrimination Act; the Genetic Information Nondiscrimination Act of 2008; and regulations promulgated pursuant thereto. ABC will promote equal opportunity for all persons without regard to race, color, religion (as applicable), creed, ethnic or national origin, sex, sexual orientation/gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, and any other category protected by federal or state civil rights law.

ABC affirms that it will not tolerate discrimination against any employee or applicant for employment because of race, color, religion (as applicable), creed, ethnic or national origin, sex, sexual orientation/gender identity/expression, disability, age (as applicable), status as a covered

veteran, or genetic information, nor will it tolerate harassment on the basis of these protected categories or any other category protected by federal or state civil rights law.

Similarly, ABC will not subject any student to discrimination or harassment under any educational program and no student shall be discriminatorily excluded from participation nor denied the benefits of any educational program on the basis of race, color, religion (as applicable), creed, ethnic or national origin, sex, sexual orientation/gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, or any other category protected by federal or state civil rights law.

#### A. Discrimination

Discrimination may occur by:

1. Treating individuals less favorably because of their race, color, religion (as applicable), creed, ethnic or national origin, sex, sexual orientation/gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, or any other category protected by federal or state civil rights law; or,
2. Having a policy or practice that has a disproportionately adverse impact on protected class members.

#### B. Harassment

##### 1. Harassment based on a protected class

Harassment is conduct that is based on a person's race, color, religion (as applicable), creed, ethnic or national origin, sex, sexual orientation/gender identity/expression, disability, age (as applicable), status as a covered veteran, genetic information, or any other category protected by federal or state civil rights law, that:

- a. Adversely affects a term or condition of an individual's employment, education, or participation in ABC's activities or living environment;
- b. Has the purpose or effect of unreasonably interfering with an individual's employment or academic performance or creating an intimidating, hostile, offensive or abusive environment to the individual; or
- c. Is used as a basis for or a factor in decisions that tangibly affects that individual's employment, education, or participation in ABC's activities or living environment.

Examples of such conduct include, but are not limited to verbal or physical conduct relating to an employee's national origin, race, surname, skin color or accent, offensive or derogatory jokes based on a protected category, racial or ethnic slurs, pressure for dates or sexual favors, unwelcome comments about a person's religion or religious garments, offensive graffiti, cartoons or pictures, or offensive remarks about a person's age.

Not every act that might be offensive to an individual or a group will be considered harassment. Whether the alleged conduct constitutes harassment depends upon the record as a whole and the totality of the circumstances, such as the nature of the conduct in the context within which the alleged incident occurs. Harassment does not include verbal expressions or written material that is relevant and appropriately related to course subject matter or curriculum.

## 2. Examples of sexual harassment

Examples of sexual harassment include, but are not limited to, the following:

- a. Refusing to hire, promote, or grant or deny certain privileges because of acceptance or rejection of sexual advances;
- b. Promising a work-related benefit or a grade in return for sexual favors;
- c. Suggestive or inappropriate communications, email, notes, letters, or other written materials displaying objects or pictures which are sexual in nature that would create hostile or offensive work, living, or educational environments;
- d. Sexual innuendoes, comments, and remarks about a person's clothing, body, or activities;
- e. Suggestive or insulting sounds;
- f. Whistling in a suggestive manner;
- g. Humor and jokes about sex that denigrate men or women;
- h. Sexual propositions, invitations, or pressure for sexual activity;
- i. Use in the classroom of sexual jokes, stories, remarks, or images that are in no way or only marginally relevant to the subject matter of the class;
- j. Implied or overt sexual threats;
- k. Suggestive or obscene gestures;
- l. Patting, pinching, and other inappropriate touching;
- m. Unnecessary touching or brushing against the body;
- n. Attempted or actual kissing or fondling;
- o. Suggestive or inappropriate acts, such as comments, innuendoes, or physical contact based on one's actual or perceived sexual orientation and/or gender identity/expression.

The examples listed above are not exclusive, but simply represent types of conduct that may constitute sexual harassment.

Please note that incidents of sexual violence may also constitute criminal acts and as such, investigation and processing by the criminal justice system, local police, the ABC Security, and crisis intervention centers may occur in addition to the process set forth in this policy. In such cases, the Complainant must be notified of his/her right to file a criminal complaint and should not be discouraged or dissuaded in any way from doing so.

## **VI. CONSENSUAL RELATIONSHIPS**

Intimate relationships between supervisors and their subordinates and between faculty members and students are strongly discouraged due to the inherent inequality of power in such situations. These relationships could lead to undue favoritism or the perception of undue favoritism, abuse of power, compromised judgment or impaired objectivity.

Engaging in a consensual relationship with a student over whom the faculty member has either grading, supervisory, or other evaluative authority constitutes a conflict of interest. The faculty member must take steps to remove the conflict at least while the student is in his/her class.

Likewise, it is a conflict of interest for a supervisor to engage in a consensual relationship with a subordinate over whom he/she has evaluative or supervisory authority. The supervisor must take action to resolve the conflict of interest by, for example, assigning another individual to supervise and/or evaluate the subordinate.

## **VII. PROCEDURES**

### **A. General**

1. The following procedures are intended to protect the rights of the aggrieved party (hereinafter, "the Complainant") as well as the party against whom a complaint of discrimination or harassment is lodged (hereinafter "the Respondent"), as required by state and federal laws. Each complaint must be properly and promptly investigated and, when warranted, appropriate disciplinary action taken against the Respondent.
2. The ABC Office of the Executive Vice President shall always be consulted prior to investigation.
3. In situations that require immediate action because of safety or other concerns, ABC will take any administrative action that is appropriate, e.g., administrative leave with pay pending the outcome of the investigation. Students may be placed on interim suspension under the appropriate circumstances and in accordance with the ABC student conduct/disciplinary rules pending the outcome of the investigation. The ABC Office of the Executive Vice President shall be contacted before any immediate action is taken.

### **B. Filing Complaints**

1. Any current or former student, applicant for employment, current or former employee, contractor or third party who believes he/she has been subjected to discrimination or harassment at ABC or who believes that he/she has observed discrimination or harassment taking place shall present the complaint to one of the offices designated below:

#### **Complaints against Students:**

Title IX Coordinator  
Ms. Mary Carpenter  
Office of the President  
101 Flakes Administration Building

#### **Complaints against employees, contractors, or third parties:**

Office of the President  
101 Flakes Administration Building

2. Complaints must be brought within 365 days of the last incident of discrimination or harassment. Complaints brought after that time period will not be pursued absent extraordinary circumstances. The determination of whether the complaint was timely or whether extraordinary circumstances exist to extend the complaint period shall be made in conjunction with the ABC Office of the Executive Vice President .

3. Every attempt will be made to get the Complainant to provide the complaint in writing. The complaint shall include the circumstances giving rise to the complaint, the dates of the alleged occurrences, and names of witnesses, if any. The complaint shall be signed by the Complainant. However, when the Complainant chooses not to provide or sign a written complaint, the matter will still be investigated and appropriate action taken.

Complaints made by or against a third party must also be investigated to the extent possible.

In the event that a Complainant decides that he/she does not want to pursue the Complaint or makes the Complaint anonymously, the Investigator shall continue to pursue the Complaint to the extent that it can, consistent with the Complainant's request. Any such request will be evaluated in the context of ABC's responsibility to provide a safe and nondiscriminatory environment for all students and employees. At all times, the Investigator shall pursue necessary measures to remedy the effects of any harassment, prevent retaliation, and protect other members of the educational community to the extent possible.

4. The Investigator shall notify the Complainant of resources available to him/her, such as counseling, health services, interim protective measures, and his/her right to file a complaint with the appropriate law enforcement agency. The Investigator will continuously assess what resources might be beneficial to the Complainant and advise Complainant of the availability of those resources throughout the investigation process.

5. If the complaint does not rise to the level of discrimination or harassment, the Investigator may dismiss the complaint without further investigation after consultation with ABC Office of the Executive Vice President. The Complainant should be informed of other available processes. In the event that a complaint is dismissed under this Paragraph, the Complainant may appeal that dismissal under the procedures set forth below.

### C. Investigation

1. ABC will initiate an investigation of all complaints making allegations of potential violations of this policy. Such investigation will be prompt, thorough, and impartial. Further, even absent a formal complaint, ABC will also investigate any conduct that might be found to violate this policy under the procedures set forth below if it learns of such conduct in a timely manner. When the Respondent is someone other than a student, the President will identify an individual who has been or will be briefed in investigating such complaints to investigate the complaint and carry out the responsibilities assigned pursuant to this policy.

2. The ABC Office of the Executive Vice Presidents shall be notified of the complaint, whether written or verbal, as soon as possible after it is filed and the investigation will be under the direction of the ABC Office of the Executive Vice President. All investigatory notes and documents shall be attorney work product.

3. When the Respondent is a student, the Provost will identify an individual who has been or will be briefed in investigating such complaints to investigate the complaint and carry out the responsibilities assigned pursuant to this policy. If a finding of violation is

made, any resulting disciplinary action will be undertaken in compliance with ABC's student disciplinary procedures.

4. When a student is involved as the Complainant, the Respondent, or an individual interviewed, all documentation referring to that student shall be subject to the provisions and protections of the Family Educational Records and Privacy Act (FERPA).

5. In consultation with and under the direction of the ABC Office of the Executive Vice President, the Investigator shall conduct an investigation of the complaint. This investigation shall include interviews with both the Complainant and the Respondent, unless either declines an in-person interview. The investigation shall also include interviews of relevant witnesses named by the Complainant and Respondent. The purpose of the investigation is to establish whether there has been a violation of this policy. It is the responsibility of the Investigator to weigh the credibility of all individuals interviewed and to determine the weight to be given to information received during the course of the investigation.

6. To the extent possible, the investigation will be conducted in such a manner to protect the confidentiality of both parties. However, the Complainant, Respondent and all individuals interviewed shall be informed that ABC has an obligation to address harassment and that, in order to conduct an effective investigation, complete confidentiality cannot be guaranteed. Information may need to be revealed to the Respondent and to potential witnesses. However, information about the complaint should be shared only with those who have a need to know about it.

7. A Complainant may be informed that if he/she wants to speak privately and in confidence about discrimination or harassment, he/she may wish to consult with a social worker, counselor, therapist or member of the clergy who is permitted, by law, to assure greater confidentiality.

8. The Investigator shall notify the Respondent in writing within ten (10) working days of receipt of the complaint. The Respondent shall respond in writing to the complaint within five (5) working days following the date of receipt of the Investigator's notification.

9. If either the Complainant or the Respondent is a student, the Investigator should communicate the prohibition against disclosure of personally identifiable information with regard to the student, based on FERPA.

10. The Complainant, the Respondent and all individuals interviewed shall be notified that any retaliation engaged in connection with the complaint or its investigation is strictly prohibited regardless of the outcome of the investigation. Any retaliation should be reported to the Investigator immediately. In the event that ABC learns of any retaliation against anyone involved in an investigation under this policy, it will be investigated pursuant to the procedure set out in this policy and any individual found to have engaged in any form of retaliation will be subject to discipline.

11. At any time during the course of the investigation, the Investigator may meet with both the Complainant and the Respondent individually for the purpose of resolving the complaint informally. Either party has the right to end informal processes at any time. Informal Resolution will not be used in cases involving sexual assault. If informal

resolution is successful in resolving the complaint, a report of such, having first been reviewed and approved by the ABC Office of the Executive Vice President, shall be submitted to the President.

12. If informal resolution is not attempted or is unsuccessful, the Investigator shall draft a report summarizing the investigation which shall be sent to the ABC Office of the Executive Vice President for review. Each report shall outline the basis of the complaint, including the dates of the alleged occurrences, the response of the Respondent, the findings of the Investigator, whether there were any attempts made to resolve the complaint informally, a determination of whether there was a violation of this policy, and recommendations regarding disposition of the complaint. The report shall also describe all steps taken to (1) end the discrimination or harassment, (2) remedy the effects of the discrimination or harassment, and (3) recommendations to prevent the recurrence of the discrimination or harassment.

After review and approval by the ABC Office of the Executive Vice President, the report shall be submitted to the President within sixty (60) calendar days following receipt of the complaint, absent cause for extending the investigation timeline. No working papers, statements, etc. generated in the investigation should be attached to the report. In situations where more time is needed to complete the investigation, for reasons such as difficulty in locating a necessary witness, or complexity of the complaint, additional time may be taken, but only following notice to the ABC Office of the Executive Vice President and written notice to both the Complainant and the Respondent.

13. If, after investigation, there is insufficient evidence to corroborate the complaint or, in any situation in which the Complainant refuses to cooperate in the investigation, it may be appropriate to discuss the complaint with the Respondent, informing him/her that he/she is not being accused of a violation of this policy, but that the conduct alleged, had it been substantiated, could be found to violate this policy. Any investigation and subsequent discussion should be documented and a report submitted as set forth in this procedure. It should also be noted that conduct that does not rise to the level of legally actionable discrimination or harassment may, nevertheless, provide a basis for disciplinary action against the Respondent under the college's student conduct/disciplinary rules.

14. The President shall review the Investigator's report, and shall make a final written determination, within a reasonable time as to whether a violation of this policy occurred and what the appropriate resolution should be. After the President has made this determination, the Investigator shall, absent unusual circumstances and after consultation with the ABC Office of the Executive Vice President, separately notify both the Complainant and the Respondent of the outcome of the investigation.

The notice provided to the Respondent shall include the finding of whether the Respondent was found to have violated this policy and any sanctions imposed against him/her. The notification to the Complainant shall include notice of whether the Respondent was found to have violated this policy and, if so, notice of only those sanctions imposed against the Respondent that directly relate to the Complainant.



15. If the investigation reveals evidence that a violation of this policy has occurred, the President will take immediate and appropriate corrective action. Such action may include meeting with the Respondent and/or the Complainant and attempting to resolve the problem by agreement, except in the case of sexual assault. Appropriate steps must be taken to ensure that the discrimination or harassment will not reoccur.

16. After completion of the investigation and any subsequent disciplinary proceedings, all documentation shall be forwarded to the ABC Office of the Executive Vice President . However, copies of the President's determination, the Investigator's report, the complaint (if it concerns an employee) and documentation of any disciplinary action taken against the Respondent should be placed in a file maintained by the Investigator. Copies of documentation establishing disciplinary action taken against the Respondent, if any, whether an employee or student, shall also be maintained in the Respondent's personnel or student record, as appropriate.

17. A complaint found to have been intentionally dishonest or maliciously made will subject the Complainant to appropriate disciplinary action.

#### D. Appeal of Decision

Because ABC is committed to a high quality resolution of every case, the Complainant and Respondent are afforded an opportunity to appeal the President's decision concerning Respondent's responsibility for the alleged conduct. During the appeal process, the parties may bring information to ABC's attention that would change the decision. The appeal process will not be a de novo review of the decision, and the parties will not be allowed to present their appeals in person to the President unless the President determines, in his/her sole discretion, to allow an in-person appeal.

The Investigator shall provide written notice of the appeal process to the parties at the time that the parties are advised of the outcome of the investigation. Either party may send a written appeal to the President within ten (10) working days, absent good cause, of receipt of the President's determination. The appealing party(ies) must explain why he/she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change the determination in the case. Failure to do so may result in a denial of the appeal.

The President will issue a written response to the appeal as promptly as possible. This decision will constitute ABC's final decision with respect to the President's determination.

### **VIII. Other Applicable Procedures**

An aggrieved individual may also have the ability to file complaints with external agencies such as the Equal Employment Opportunity Commission (EEOC), the Tennessee Human Rights Commission (THRC), the Office for Civil rights (OCR), and the courts. Please note that the deadlines for filing with external agencies or courts may be shorter than the deadline established for filing a complaint under this policy. Examples of shorter deadlines include, but are not limited to 180 days to file a complaint under Title VI & Title IX, as well as 300 days to file a complaint under Title VII.