

SEXUAL AND GENDER-BASED MISCONDUCT POLICY & CONDUCT PROCEDURES

The College forbids any type of sexual or gender-based misconduct among its students, faculty, and staff. The College encourages all members of the academic community to report suspected sexual and gender-based misconduct to the appropriate authorities so that it can be investigated, remedied, and eliminated. Such misconduct is prohibited whether the actor is a student, faculty member, staff member, contractor, visitor, or other member of the College community. BSC forbids retaliation against any person who has opposed, reported, or participated in an investigation concerning sexual or gender-based misconduct.

Sexual misconduct incorporates a range of behaviors including non-consensual sexual intercourse, non-consensual sexual contact, sexual exploitation, sexual harassment, intimate partner violence, stalking, and any other conduct of a sexual nature that is non-consensual, or has the purpose or effect of creating an intimidating, hostile, or offensive environment, or unreasonably interferes with an individual's work and/or academic performance. Gender-based misconduct encompasses behavior that is not sexual in nature, but is directed at a person because of their gender or gender identification.

Through this policy and related programs and procedures, Birmingham-Southern College intends to comply with Title IX of the Education Amendments of 1973 ("Title IX"), Title VII of the Civil Rights Act of 1964 ("Title VII"), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), the Campus Sexual Violence Elimination Act ("SaVE Act"), and the Family Educational Rights and Privacy Act ("FERPA") and all regulations implementing these laws.

A. Policy Definitions

1. **Non-Consensual Sexual Intercourse** – Any sexual intercourse (anal, oral, or vaginal), however slight, with any body part or object by one person (perpetrator) against the will or without consent of another person (victim).
2. **Non-Consensual Sexual Contact** – Any intentional sexual touching, however slight, with any body part or object by one person (perpetrator) against the will or without consent of another person (victim). Sexual contact includes: intentional contact with the breasts, buttock, groin, or genitals, or touching another person with any of these body parts, or making another person touch any of these body parts. Sexual contact is not limited to these body parts and may include any intentional bodily contact in a sexual manner.
3. **Sexual Exploitation** – Behavior that does not constitute one of the other sexual misconduct offenses, but takes sexual advantage of another person in a non-consensual or an abusive manner for the benefit or advantage of someone other than the one being exploited. Sexual exploitation includes but is not limited to: invasion of sexual privacy, prostituting another individual, non-consensual video or audio-taping of nudity or sexual activity, going beyond the boundaries of consent (e.g., allowing friends to hide in the closet to watch consensual sex), engaging in non-consensual voyeurism, knowingly transmitting an STI or HIV to another student, exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals, or gender-based stalking and/or bullying.
4. **Sexual Harassment** – Includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual or gender-based (behavior that is not sexual in nature, but is directed at a person because of their gender or gender identification) nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or access to or the enjoyment of an educational benefit; (2) submission to or rejection of such conduct is used as a basis for employment or academic decisions or decisions concerning the educational benefits affecting the individual; or (3) conduct that has the purpose or effect of unreasonably interfering with an individual's work or academic performance or other educational benefit or creating an intimidating, hostile or offensive working, learning, or living environment. Sexual harassment often occurs when one individual has actual or apparent authority over another person, such as a faculty member who can affect a student's grades, or a supervisor who can affect terms and conditions of employment of a subordinate. But sexual harassment can occur between two individuals of any rank or status. For example, it is possible for students to sexually harass each other, a student to sexually harass a faculty member, and a subordinate employee to sexually harass the supervisor.

Sexual harassment is absolutely prohibited, whether the harassing individual is a student, employee, contractor, volunteer, or any other person who benefits from a relationship with the College.

Examples of sexual harassment include but are not limited to:

- an attempt to coerce an unwilling person into a sexual relationship;
- unwelcome questions about sexual behavior or sexual preference;
- unwelcome verbal conduct such as sexual innuendo, suggestive comments, jokes of a sexual nature;

- unwelcome commentary about an individual's body, appearance or sexuality
 - displaying, distributing, or posting of graphic or sexually suggestive objects, pictures, cartoons, or graffiti by any means, including but not limited to, computer networks, cell phones, iPads, or any other electronic device;
 - repeatedly subjecting a person to egregious, unwelcome sexual attention;
 - suggestive, insulting, or obscene comments or gestures;
 - punishing a refusal to comply with a sexual based request;
 - conditioning a benefit on submitting to sexual advances;
 - sexual or intimate partner violence;
 - gender-based stalking;
 - gender-based bullying.
5. **Intimate Partner Violence** – Physical, verbal, emotional, financial, or psychological abuse (e.g., threats of violence, intimidation) committed by a person who is or has been in a relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
6. **Stalking** – 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.

B. Understanding Consent

1. **Consent** – Consent is an essential aspect of any sexual activity. Consent is clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given verbally or non-verbally, as long as those words or actions create mutually understandable, clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous relationships or prior consent does not imply consent to future sexual acts. Consent can be revoked at any time during a sexual interaction. Consent cannot be obtained through force^a or coercion^b. A person who is incapacitated^c cannot give consent. In Alabama, the legal age of consent is usually 16 years of age.
- a Force** - The use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion^b to overcome resistance or produce consent (e.g. Have sex with me, or I'll hit you; Have sex with me, or I'll post compromising photos of you). Note: There is no requirement that an individual resist the sexual advance or request, but resistance is a clear demonstration of non-consent. Sexual activity that is forced is inherently non-consensual, but non-consensual sexual activity does not require force.
- b Coercion** – Exerting unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear that he or she does not want to have sex, that they want to stop, or that they do not want to go beyond a certain point of sexual interaction, continued pressure can be coercive.
- c Incapacitation** – A person is incapacitated when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g. to understand the “who, what, where, why or how” of their sexual interaction). Engaging in sexual activity with someone who is known (or one should have known) to be mentally or physically incapacitated due to mental disability, involuntary physical restraint, alcohol or drugs, unconsciousness, sleep, or blackout constitutes a violation of this policy.

C. Related Behaviors Representing Violations of the Sexual Misconduct Policy

1. **Attempted Sexual Misconduct** – An attempt to commit an act of sexual misconduct is considered a violation of the sexual misconduct policy.
2. **Aiding Sexual Misconduct** – Providing aid to someone attempting to or engaging in an act of sexual misconduct is considered a violation of the sexual misconduct policy.
3. **Retaliation** – Taking an action against a person who has opposed sexual misconduct, reported sexual misconduct, or participated in an investigation concerning sexual misconduct. Retaliation can include physical violence, threats, intimidation or coercion; adverse employment or educational actions (such as demotion,

discharge, giving an unwarranted bad grade); or increasing or intensifying a pattern of sexual misconduct. An act of retaliation toward any person who has opposed, reported, or participated in an investigation of sexual misconduct is prohibited and will be subject to disciplinary action, up to and including immediate expulsion or discharge.

4. **Malicious Reporting** – Submitting a false report of sexual misconduct with the intent of causing emotional, psychological, educational, or other harm to another person. A Sexual Misconduct Hearing Board (described below in F.6 and H) finding of “Not in Violation” regarding the sexual misconduct policy is not sufficient evidence to demonstrate that a report was malicious or that a violation did not occur. A finding of this nature simply indicates the Board felt there was not enough evidence to find a person in violation.

D. Overview of Reporting and Support Resources

1. Filing an Official Report of Sexual Misconduct

The following list provides an overview of the primary resources authorized to receive and investigate official reports of sexual misconduct. A more comprehensive overview of the reporting process is detailed later in the policy.

Alleged Victim or Target of Sexual Misconduct	Campus Entity	Contact Info
Student, Faculty, Staff, or Guest	Campus Police	205-226-4700 campuspolice@bsc.edu Student Services 270
Student	Dana Bekurs, Assistant Dean of Students	205-226-475 dwbekurs@bsc.edu Norton 220
Faculty or Staff	Susan Kinney, Director of Human Resources	205-226-4645 skinney@bsc.edu Munger 308
Faculty or Staff	Lane Estes, VP for Administration & Government Relations	205-226-4641 lestes@bsc.edu Munger 213
Student, Faculty, Staff, or Guest	David Eberhardt, Title IX Coordinator VP for Student Development	205-226-4731 deberhar@bsc.edu Norton 220

Any of the individuals identified above can assist an individual in filing a report; however, in situations where there is an imminent threat of bodily harm, please contact Campus Police (205-226-4700) immediately for assistance.

Individuals have the right to file a criminal complaint with law enforcement officials, regardless of their decision about taking advantage of the College’s adjudicatory process for sexual misconduct. Campus Police can assist with filing police report with local authorities. If you would prefer to contact Birmingham Police directly to file a report, the non-emergency phone number is 205-328-9311.

2. Confidential Support Resources

For those individuals seeking confidential support, the following on-campus and off-campus resources are available. These resources may assist an individual in filing an official report through the means detailed above, but they are under no obligation to report incidents of sexual misconduct nor are they authorized to receive or investigate reports of sexual misconduct.

Support Resource	Contact Info	Location
Cara Blakes, Counseling Services	205-226-4717 clblakes@bsc.edu	On-Campus, Norton Campus Center, 2 nd Floor
Marlena Stowe Counseling Services	205-226-4717 mdstowe@bsc.edu	On-Campus, Norton Campus Center, 2 nd Floor
Yvette Spencer, Health Services	205-226-4717 yspence@bsc.edu	On-Campus, Norton Campus Center, 2 nd Floor
Rev. Julie Holly, College Chaplain	205-226-4761 jbholly@bsc.edu	On-Campus, Norton Campus Center, Suite 120
YWCA, Central Alabama	205-322-4878 (24-hour hotline)	Off-Campus, Domestic Violence Services 309 23 rd Street North, Birmingham, AL, 35203 www.ywcabham.org/end-domestic-violence
Rape Response, The Crisis Center, Inc.	205-323-7273 (24-hour hotline)	Off-Campus, Sexual Violence Services 3600 8 th Avenue South, Suite 501, Birmingham, AL, 35222 www.crisiscenterbham.com/rape-response.php

3. **Additional Campus Resources**

Any other employee of the College not listed above may also serve as a resource for students or fellow employees. For example, students may wish to speak with a faculty advisor or coach who they believe will provide meaningful support. However, all employees other than those listed as a Confidential Support Resource must relay the information they receive regarding possible sexual misconduct with the Title IX Coordinator.

E. Reporting: When a Student is Subjected to Sexual Misconduct

Any person may make an official report that a student has been subjected to sexual misconduct. A report may be made by the student who believes that she or he is the target or victim of sexual misconduct, or by a person who witnesses or hears about an incident of sexual misconduct toward a student. A reporting person may file a report with one of the designated officials listed in D1. A report may initially be filed by sending an email, calling, or coming to the appropriate office to see designated College personnel. An official report will likely involve both a meeting with College personnel, as well as a written statement by the reporting person and the suspected target or victim.

1. **Mandatory Reporters** – College employees are considered “responsible employees,” and have a duty and a responsibility to act when notified of an alleged incident of sexual misconduct by relaying that information to the Title IX Coordinator. Reports of sexual misconduct will be handled with discretion, and the information reported will be shared only with those necessary, including investigators and witnesses, as well as the accused student (“respondent”) if a full investigation is initiated.
2. **Confidentiality** – An investigation, hearing, appeal, and reconsideration of any sexual misconduct violation in which the target or victim of misconduct is a student shall remain confidential. Those defined herein as within the bounds of confidentiality may not divulge anything that is said or done throughout the conduct process. Not all parties within the bounds of confidentiality are informed of every sexual misconduct matter; however, those bound by confidentiality include Sexual Misconduct Hearing Board members, Campus Police, Advisors, the Associate Dean of Students, the Assistant Dean of Students, members of the investigation team or independent third party investigators, the Vice President for Student Development, the Provost, the Director of Human Resources, the Vice President for Administration, and the President, an Appeal Committee, and when appropriate or necessary, legal counsel for the College. Should anyone outside the bounds of confidentiality receive information which is considered to be confidential, he or she will automatically be bound by confidentiality. In addition, the target or victim of misconduct or respondent may include with the bounds of confidentiality his or her parents, faculty, staff, minister or spiritual advisor, personal or legal counsel. Should anyone within the bounds of confidentiality violate the

requirement of confidentiality, the Dean of Students may elect to pursue charges for failing to comply with directives regarding confidentiality. The College will respect the request of a student not to disclose his or her identity to the extent possible while still complying with its obligations to protect the College community as a whole against sexual misconduct and discrimination. If the alleged victim demands absolute confidentiality, the Title IX Coordinator will determine how the College will respond to meet its responsibilities to both the alleged victim and the College community.

3. **Confidential Reporters** – If a student would like to speak with someone at the College confidentially when no further reporting of the incident will necessarily occur, options include a personal counselor or health professional in Counseling Services and Health Services, as well as the College’s Chaplain.
4. **Limitations of College Authority** – The College will not investigate or adjudicate alleged student conduct that occurs off campus when the alleged victim is not a College student, employee, or other member of the College community (such as a contractor or volunteer). If the College learns of such conduct, the College may report allegations of such conduct to law enforcement authorities or other educational institutions. In addition, the College may be limited in its ability to take remedial action involving an alleged perpetrator who is not a student or employee. In such instances, the College will support the alleged victim with College resources (which may include removal and banning of the suspected individual from campus) and refer alleged victims to other entities which may provide support or initiate criminal prosecution.
5. **Interim Measures** – In order to minimize disruption to the alleged victim’s educational experience, interim measures may be put in place. An official report does not have to be made for interim measures to be initiated. The College will make necessary changes to the academic, living, transportation, and working situations of any alleged victim if requested and reasonably available, whether or not the alleged victim chooses to make an official report to campus officials or local law enforcement.

Interim measures include, but are not limited to:

- Access to Counseling Services and assistance in setting up initial appointments
- No contact directives
- Change in class schedule, including the ability to drop a course without penalty or to transfer sections, as well as changes in the class schedule of individuals alleged to have engaged in sexual misconduct
- Rescheduling of exams or assignments
- Providing alternative course completion options
- Change in work schedule or job assignment
- Housing reassignment
- Adjustments to dining arrangements
- Assistance from College support staff in completing housing relocation
- Limiting respondent’s access to certain College facilities or activities pending investigation and/or hearing outcome
- Interim suspension for the respondent

6. **Safe Haven** – Students who seek assistance as a result of experiencing sexual misconduct are not subject to sanction by a College authority for being in violation of College policy related to alcohol, illegal drugs, or other policies at the time of the alleged sexual misconduct.

F. Procedures: When a Student is Accused of Sexual Misconduct

1. **Time Frame** – Once an initial complaint regarding sexual misconduct has been received by College officials, a conduct official in Student Development, or when appropriate, an independent third party will move forward with investigating and resolving the matter as promptly as reasonably possible. The circumstances of the alleged incident(s) will determine the timeframe within which all individuals involved, including all relevant witnesses, can be contacted and meetings held. Generally, the investigative phase can be expected to be completed within two weeks to one month from the initial report of the incident, exclusive of any significant breaks in the academic calendar. At the conclusion of the investigation phase, the alleged target or victim and the respondent will generally have one week to review an investigation report and submit a written response. The decision phase of this process will likely take two weeks to one month, dependent upon the timing within the academic calendar. Appeals will usually require one week to one month for a final decision, depending on whether the matter is referred to a committee and the timing within the academic calendar. Because the College’s obligation to protect its community members from sexual misconduct exists independently of the criminal justice system, the investigatory and

decision procedures (if applicable) will continue notwithstanding any related criminal proceedings. The College may briefly delay its response if necessary to avoid interference with a law enforcement investigation.

2. **Investigation** – Once a report has been made, a conduct official in Student Development will conduct a preliminary investigation (e.g. reviewing any Campus Police reports, meeting with the alleged victim, etc.) to determine whether the information provided indicates reasonable cause of a sexual misconduct policy violation. If reasonable cause exists, the official, or when appropriate, an independent third party will conduct a full investigation using information from the preliminary investigation, obtaining a statement from the respondent, and interviewing relevant witnesses. When the investigation is complete an investigation report will be compiled and provided to both parties (i.e., alleged victim and respondent) to review and submit a written response within a designated timeframe established by the investigator. At the conclusion of the investigation process, the investigator, if not a Student Development or College official, will make a recommendation to Student Development conduct officials regarding the finding.
3. **Advisor** – The alleged target or victim of misconduct and respondent are offered advisors once a complaint enters the investigation phase (though one can be requested earlier). The advisor provides support and guidance through the investigation and hearing process. The advisor should be a willing member of the BSC community, although exceptions may be granted by the responding and/or investigating official for the complaint (e.g., a Crisis Center staff member or volunteer). Additionally, upon request, an advisor can be appointed from the Sexual Misconduct Hearing Board pool.
4. **Standard of Evidence** – When determining if a violation of the sexual misconduct policy has occurred, the standard of evidence to be used by any conduct authority is preponderance of evidence. Preponderance of evidence indicates that a violation is more likely than not to have occurred.
5. **Administrative Conduct Meeting** – If both the alleged target or victim of misconduct and respondent request to have an incident of sexual misconduct handled administratively, the conduct official may render a decision as to whether the respondent violated the sexual misconduct policy and assess sanctions if required. If the complainant and respondent accept the findings/sanctions of the conduct official, the matter will be closed. If not, the matter will be referred to the Sexual Misconduct Hearing Board.
6. **Sexual Misconduct Hearing Board** – The conduct official may refer an investigation to the Sexual Misconduct Hearing Board (“the Board”), comprised of faculty, staff, and students from a pool of trained Board members. The Board is a three or five member panel that consists of a minimum of one student, one staff member, and one faculty member. When a five member panel is called, a minimum of two students should serve on the board. The Board will hear the results of the Dean’s investigation along with the testimony from relevant witnesses including the alleged target or victim of sexual misconduct and respondent, and review any other appropriate materials. They will reach decisions regarding violations and sanctions, as appropriate. Details regarding the procedures of the Board are outlined below.
7. **Appeal** – Once a decision is reached either through an Administrative Conduct Meeting or through the Sexual Misconduct Hearing Board, a respondent or alleged victim may appeal the decision according to the guidelines detailed below.

Sexual Misconduct Hearing Board Procedures

The procedure for a hearing will be as follows:

1. The Vice President of Student Development or other conduct official, other than the individual investigating the complaint, serves as convener and chair. The chair participates in the hearing but does not vote on the hearing outcomes.
2. A three or five member panel is selected from the Sexual Misconduct Hearing Board pool. The Board will consist of a minimum of one student, one staff member, and one faculty member. When a five member panel is called, a minimum of two students should serve on the board.
3. The investigating conduct official will serve as the presenter. The presenter presents information gathered during the investigation, but does not recommend finding or sanctions.
4. Due to the sensitive nature of these hearings, the alleged victim or target of sexual misconduct and respondent may be kept separate throughout the hearing, appearing before the Board at designated times but able to hear all

statements made within the hearing.

5. No witness, other than the respondent or alleged victim or target of sexual misconduct, if he/she chooses to testify, will be allowed to hear the testimony of other witnesses.
6. Before testifying, each student witness will be reminded that their statements are bound by the Honor Code, and employee witnesses will be reminded that their testimony is expected to be truthful under penalty of termination of employment.
7. The Board will call witnesses, consider relevant information, and question the respondent and alleged victim until it has exhausted every reasonable method of ascertaining the facts.
8. The Board will not consider the respondent's past findings of violations of the Honor code or Social Regulations in determining whether the respondent has violated Social Regulations or Sexual Misconduct Policies. Such evidence may be considered in determining sanctions.
9. An attorney may be present during the hearing. The attorney may speak to the person represented by the attorney, but may not address directly anyone else involved in the hearing other than the Chair. Any comments or questions an attorney has should be directed to the Chair of the Board in a private conversation.
10. The Board must act with complete impartiality. A Board member may be excused from a case in which personal involvement may constitute a conflict of interest. Additionally, Board composition will be shared with the reporting party and respondent at least 72 hours in advance of the hearing. Either party may request a member of the Board be removed.
11. The respondent is considered not to have violated any policy throughout the hearing until there is a finding that a violation has occurred. The standard of proof is a preponderance of evidence that a violation occurred. The finding must be supported by a majority vote of the Board.
12. As the conduct authority for issues of sexual misconduct, the Board has the authority to issue sanctions according to the guidelines outlined in the *Student Handbook*.

Rights of the Alleged Victim and Respondent

The alleged victim and the respondent have the following rights:

1. The alleged victim and respondent are not required to participate in any phase of the conduct process. If either person chooses not to engage, the College may choose to move forward without their participation. The alleged victim and respondent may reengage the process at any time.
2. The alleged victim and respondent will be notified in writing of a hearing at least 72 hours prior to the hearing. This time period may be shortened upon the agreement of the both parties and the Board ("Chair").
3. The alleged victim and respondent may select an advisor once a complaint enters the investigation phase (though one can be requested earlier). The advisor provides support and guidance through the process, but does not speak on behalf of the alleged victim or the respondent. The advisor should be a willing member of the BSC community, although exceptions may be granted by the responding or conduct official investigating the complaint (e.g., a Crisis Center staff member or volunteer). Additionally, upon request, an advisor may be appointed from the Student Development staff.
4. The alleged victim and respondent are not required to appear at the hearing. If either person fails to attend, the hearing will proceed and evidence presented as if both parties were present.
5. The alleged victim and respondent have the right to be present throughout the hearing except during the Board's deliberations. Presence may be limited to hearing testimony remotely through telephone or similar aid of technology.
6. The alleged victim's sexual history will not be discussed during the hearing unless it relates to the respondent and is determined by the Chair to be highly relevant to the alleged misconduct.
7. The alleged victim and respondent may call relevant witnesses to speak on his or her behalf. Requests should be made to the Chair in writing so that notice can be given for any witness requested to appear.
8. The alleged victim and respondent may address the Board during his or her appearance before the Board.
9. The alleged victim and respondent may hear the statements of all witnesses called and question them. To avoid an adversarial dynamic, the alleged victim and respondent may only directly question those witnesses called on his or her behalf. For all other witnesses, questions may be submitted to the Chair prior to and during the hearing. Those questions will be reviewed for relevancy by the Board, amended as deemed appropriate, and asked by the Chair.
10. The alleged victim and respondent may each call one or two character witnesses to speak upon his or her behalf.
11. In cases that involved multiple respondents, the Board will arrive at an independent decision for each respondent.
12. The alleged victim and respondent will be notified of the hearing outcome.
13. The alleged victim and respondent may appeal the decision of the Board to the President in accordance with the Appeal section outlined below.

14. Both the alleged victim and respondent will be notified in writing of the potential charges; date and time of hearing proceedings; hearing board composition; the outcomes and/or any changes to the outcomes (e.g., hearing decision, hearing sanctions, interim measures); and any subsequent appeal.

Appeal

1. A respondent or alleged victim may appeal the finding of the Board in writing to the President of the College within five class days of the decision or before the last day of the term, whichever comes first. The President may review the case personally or appoint a committee to review the case and recommend a response, including any individuals from among the trained members of the Sexual Misconduct Hearing Board pool who were not previously involved in any capacity with the hearing.
2. An appeal is limited to a review of the full report of the Board, including the hearing transcript, for the purpose of determining whether it acted in accordance with procedural and substantive fairness. An appeal on the basis of substantive fairness may not contest the factual findings of the Board but is limited on the basis of the fundamental fairness of the penalty or the application of the standards of the Sexual Misconduct Policy.
3. An appeal in which the finding of the Board is reversed may be remanded to the Board for rehearing with a written opinion or directive of the President.
4. An appeal by the respondent may not result in a more severe penalty for the respondent; however, an appeal by the alleged victim may result in a more severe penalty for the respondent. In both circumstances, reversal of the finding and/or modification of the sanction may occur without rehearing by the Board.

G. Remedial Procedures When an Employee is Accused of Sexual Misconduct: Investigation, Recommended Outcomes, Hearings, and Related Matters

The Director of Human Resources will be notified of all reports of sexual misconduct directed toward an employee. In all cases, except when the person suspected of engaging in misconduct is a student, the Director will assess each such situation by holding fact finding conferences and obtaining statements from employees. In any situation in which the Director of Human Resources is accused of violating this policy, the Vice President for Administration or another person designated by the Vice President for Administration will fulfill the role of the Director of Human Resources.

The Director of Human Resources will report findings to the Provost (if the accused is a faculty member) or to the appropriate Vice President (if the accused is not a faculty member) and make a recommendation concerning further action and disposition of the matter.

After reviewing all the evidence, the Provost or the appropriate Vice President, in consultation with the Director of Human Resources, will make a determination whether reasonable grounds exist to believe that sexual misconduct has occurred. If such grounds are found to exist, the Provost or appropriate Vice President will take all appropriate action to eliminate such conduct and impose appropriate discipline. In any situation in which the Provost or appropriate Vice President is accused of violating this policy, the President of Birmingham-Southern College will fulfill that role. In any situation in which the President of the College is accused of violating this policy, the Director of Human Resources, in consultation with the Chairperson of the Board of Trustees will fulfill that role.

If either the employee accused of engaging in sexual misconduct or the person who is believed to have been the target or subject of sexual misconduct is dissatisfied with the action taken by the Provost or Vice President, the person may appeal the decision to a Sexual Misconduct Hearing Board. If the accused person is a faculty member, the Board will consist of a three faculty member panel, selected by the Provost from a pool of trained Board members who have been appointed by the Chair of the Faculty Advisory Committee. If the accused person is a staff member, the Board will consist of three staff members from a pool of trained Board members appointed by the Director of Human Resources.

If either the employee accused of engaging in sexual misconduct or the person who is believed to have been the target or subject of sexual misconduct is dissatisfied with the action taken by the Sexual Misconduct Hearing Board, the person may appeal the decision to the President in writing within 21 days after the Board's determination is communicated to the person. The other party will have 21 days to respond in writing to the appeal, and the President will make the final determination based upon the record before the Board and the written submissions of the accused and the person who is believed to have been the target or subject of sexual misconduct.

Because the College's obligation to protect its community members from sexual misconduct exists independently of the

criminal justice system, the investigatory and hearing procedures (if applicable) will continue notwithstanding any related criminal proceedings. The College may briefly delay its response if necessary to avoid interference with a law enforcement investigation.

Advisor – The alleged victim and respondent may be assisted throughout the process by advisors. The advisor may provide support and guidance through the investigation and hearing process. The advisor should be a member of BSC community, although exceptions may be granted by the Provost or appropriate Vice President (e.g., a Crisis Center staff member or volunteer). Additionally, upon request, an advisor can be appointed from the Sexual Misconduct Hearing Board pool.

Employee Sexual Misconduct Hearing Board Procedures

In a proceeding before the Sexual Misconduct Hearing Board, the following procedures will apply:

1. The Director of Human Resources serves as convener. The senior member of the panel will serve as chair.
2. A three-member panel of faculty or staff members is selected from the Board pool.
3. The Director of Human Resources or his or her designee will serve as the presenter. The presenter presents the information gathered during the investigation.
4. Due to the sensitive nature of these hearings, the alleged victim and respondent may be kept separate throughout the hearing, appearing before the Board at designated times but able to hear all statements within the hearing.
5. No witness, other than the alleged victim or respondent if either chooses to testify, will be allowed to hear the testimony of other witnesses.
6. Before testifying, each employee witness will be reminded that his or her testimony is expected to be truthful under penalty of termination of employment, or if the witness is a student, subject to the Honor Code.
7. The Board will call witnesses, consider relevant information, and question the respondent and alleged victim until it has exhausted every reasonable method of ascertaining the facts.
8. An attorney may be present during the hearing. The attorney may speak to the person represented by the attorney, but may not address directly anyone else involved in the hearing other than the Chair. Any comments or questions an attorney has should be directed to the Chair of the Board in a private conversation.
9. The Board must act with complete impartiality. A Board member may be excused from a case in which personal involvement may constitute a conflict of interest. Additionally, Board composition will be shared with the alleged victim and respondent at least 72 hours in advance of the hearing. Either party may request a member of the Board be removed.
10. The respondent is considered not to have violated any policy throughout the hearing until there is a finding that a violation has occurred. The standard of proof is a preponderance of evidence that a violation occurred. The finding must be supported by a majority vote of the Board.

Rights of the Alleged Victim and Respondent

The reporting party and respondent will be afforded the following rights:

1. The alleged victim and respondent will be notified in writing of a hearing at least 72 hours prior to the hearing. This time period may be shortened upon the concurrence of the both parties and the Chair.
2. The alleged victim and respondent are not required to appear at the hearing. If either person fails to attend, the hearing will proceed and evidence presented as if both parties were present.
3. The alleged victim and respondent have the right to be present throughout the hearing except during the Board's deliberations. Presence may be limited to hearing testimony remotely through telephone or similar aid of technology.
4. The alleged victim's sexual history will not be discussed during the hearing unless it relates to the respondent and is determined by the Chair to be highly relevant to the alleged misconduct.
5. The alleged victim and respondent may select any willing student, faculty member, or staff member of Birmingham-Southern College to serve as his or her advisor. Additionally, upon request, an advisor may be appointed from the Sexual Misconduct Hearing Board pool.
6. The alleged victim and respondent may call relevant witnesses to speak on his or her behalf. Requests should be made to the Chair in writing so that notice can be given for any witness required to appear.
7. The alleged victim and respondent may address and question the Board during his or her appearance before the Board.
8. The alleged victim and respondent may hear the statements of all witnesses called and question them. To avoid an adversarial dynamic, the alleged victim and respondent may only directly question those witnesses called on

his or her behalf. For all other witnesses, questions may be submitted to the Chair prior to and during the hearing. Those questions will be reviewed for relevancy by the Board, amended as deemed appropriate, and asked by the Chair.

9. The alleged victim and respondent may call one or two character witnesses to speak upon his or her behalf.
10. In cases that involved multiple respondents, the Board will arrive at an independent decision for each respondent.
11. Both the alleged victim and respondent will be notified in writing of the potential charges; date and time of hearing proceedings; hearing board composition; and the outcomes and/or any changes to the outcomes (e.g., hearing decision, disciplinary action, interim measures); and any subsequent appeal.

Sexual Misconduct Hearing Board

As noted in the policy above, the Sexual Misconduct Hearing Board will often hear cases regarding alleged violations of this policy. The Board is comprised of the following members, selected and appointed as outlined below:

- Students: Five or more returning members from the previous year's Honor Council are selected by the Title IX Coordinator for training to serve as members of a hearing board.
- Faculty: Four or more faculty members will be appointed by the Chair of the Faculty Advisory Committee in consultation with the Provost, the Title IX Coordinator, and any other relevant College officials.
- Staff: Five or more staff members from across the various administrative departments of the College will be selected and trained by the Title IX Coordinator, in consultation with the Director of Human Resources and the relevant Vice Presidents who oversee the various staff members.

Each year, new members of the Board will undergo training in the various tenets of the Sexual Misconduct Policy and procedures employed to investigate and hear allegations regarding possible violations. In addition, continuing members of the Board will attend review sessions to ensure they remain aware of any changes to the Policy and are prepared to serve when called upon. Emphasis will be placed upon protection of confidentiality, appropriate and relevant questioning, effective deliberation, reaching conclusions, and other vital topics in all training and review sessions for the Board.