

## **SECTION 400: COMPLIANCE WITH FEDERAL LAWS**

---

- 401 Americans With Disabilities Act (ADA)
- 402 Employee Responsibility Regarding Students With Disabilities
- 403 Drug-Free Workplace Policy
- 404 Equal Opportunity in Education and Employment
- 405 Family Education rights & Privacy Act (FERPA)
- 406 Policy Against Harassment and Discrimination Policy
- 407 Employee Grievance Procedure

# 401: Americans with Disabilities Act (ADA)

---

## EMPLOYEE REQUEST FOR ACCOMMODATION

The Americans with Disabilities Act prohibits discriminating against individuals with disabilities. The ADA also prohibits retaliation against an employee for taking any action pursuant to the Act.

**Definition of Disability:** The ADA states that an individual is disabled if s/he:

- Has a physical or mental impairment that substantially limits one or more of the individual's major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

**Definition of Qualified Individual:** The term "qualified individual with a disability" means:

- An individual with a disability,
- Who can perform the "essential functions" of the employment position,
- With or without reasonable accommodation.

Employers are required to provide reasonable accommodation to the known limitation(s) of a person with a disability, as defined by the ADA.

In order to establish the existence of a disability and request reasonable accommodation under the ADA, an employee must complete and submit a Request for Disability Accommodation Form to Human Resources.

Employees seeking a reasonable accommodation under the ADA must follow the Employee Accommodation Procedures.

### **Documentation of Disability:**

- 1) When submitting a Request for Disability Accommodation Form, the employee must provide documentation of the disability from an appropriate health care provider. The employee will be required to sign a Medical/Health Care Information Release Form, so that the health care provider can provide the College with the appropriate documentation.
- 2) Upon request, the supervisor will provide a written description of the essential functions of the job, which may include the mental and physical demands of the employee's job.
- 3) It is the employee's responsibility to ensure that the medical documentation/information requested is provided.

**Temporary Accommodations:** After consultation with the employee and the supervisor, temporary accommodation may be provided pending receipt and evaluation of the documentation of the disability.

**Evaluation of Documentation:** Upon receipt of documentation from an employee's health care provider, a determination will be made as to whether the employee has a disability as defined by the ADA, and if the employee can perform the essential functions of the position, with or without reasonable accommodation.

**Final Determination and Notification to Employee:** The College has the authority to make the final determination regarding what accommodation, if any, is appropriate. When a final determination is made, the Director of Human Resources will send written notification to the employee of the determination, whether an accommodation has been granted, and if so, will specify what accommodation has been granted. Notification will also be given to the employee's supervisor.

**Right to Appeal:** If an accommodation is denied, the employee may file an employee grievance.

## **402: Employee Responsibility Regarding Students With Disabilities**

---

Student disclosure of a disability is voluntary. However, if a student with a disability has a need related to his/her condition and would like to request reasonable accommodations; he/she must contact the ADA Advisor to schedule an appointment to request services. The student must provide reasonable notice of the need for accommodations to the ADA Advisor.

Before most accommodations can be made, the student must present documentation of his/her disability. The documentation must be dated within the last three years. If the disability is of a physical nature, the documentation must come from the appropriate medical doctor. If the student has a learning disability, the evaluation should include test results and a statement of disability from an appropriate mental health professional, testing agency or medical physician. It is the student's responsibility to provide documentation of his/her disability. The student is responsible for any cost related to obtaining the appropriate documentation to support his/her need for reasonable accommodations.

In providing reasonable accommodations, an educational institution is not required to waive or modify program requirements or lower academic standards that are reasonable and nondiscriminatory. Once the student presents the proper documentation to the ADA Advisor and is certified to receive reasonable accommodations, the ADA Advisor will complete the necessary form which lists the reasonable accommodations to be provided. Please see the ADA Manual for additional resources.

## **403: Drug-Free Workplace Policy**

---

Community and technical colleges shall take reasonable and necessary action as required by federal and state law to provide a drug-free environment.

### Introduction

In compliance with the drug-free workplace requirements of Public Law 100-690 for recipients of Federal contracts and grants, the following policy is in effect for Bishop State Community College:

1. The unlawful manufacture, distribution, dispensation, or use of a controlled substance is prohibited by the College on any property owned, leased, or controlled by the College or during any activity conducted, sponsored, or authorized by or on behalf of the College. A "controlled substance" shall include any substance defined as a controlled substance in Section 102 of the

Federal Controlled Substance Act (21 U.S. Code 802) or in the Alabama Uniform Controlled Substance Act (Code of Alabama, Section 20-2-1, et seq.)

2. Bishop State Community College has and shall maintain a drug-free awareness program to inform employees about:
  - a. the danger of drug abuse in the workplace;
  - b. Bishop State Community College's policy of maintaining a drug-free workplace;
  - c. any available drug counseling, rehabilitation, and employee assistance program; and
  - d. the penalties that may be imposed upon employees for drug abuse violations.
3. All employees of Bishop State Community College shall comply with paragraph 1 above.
4. Any employee who is convicted by any Federal or state court of an offense which constitutes a violation of paragraph 1 above shall notify the President in writing of said conviction within five (5) days after the conviction occurs. Conviction, as defined in P.L. 100-690, shall mean "a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both."
5. In the event of a report of a conviction pursuant to paragraph 4 above where the employee is working in a project or a program funded through a Federal contract or grant, Bishop State Community College shall notify in writing within ten (10) days any Federal agency to whom such notification by Bishop State Community College is required under P.L. 100-690.
6. In the event an employee violates paragraph 1 above or receives a conviction as described in Paragraph 4 above, the respective employee shall be subject to appropriate disciplinary action which may include, but is not limited to, termination of employment. Bishop State Community College shall also reserve the right to require said employee, as condition of continued employment, to satisfactorily complete a drug treatment or rehabilitation program of a reasonable duration and nature.
7. Bishop State Community College shall make a good faith effort to ensure that paragraphs 1-6 above are followed.
8. Each employee of Bishop State Community College shall receive a copy of this policy.

In conjunction with its Drug-Free Workplace Policy, the College also complies with the Omnibus Transportation Employees Testing Act of 1991. This act relates to those employees possessing or required to possess a Commercial Driver's License (CDL).

## **404: Equal Opportunity in Education and Employment**

---

The Board of Trustees and the entities under its direction and control are equal opportunity employers. It is their policy to provide equal opportunity for employment and advancement to all applicants and employees as required by appropriate federal and state law.

## 405: Family Educational Rights & Privacy Act (FERPA)

---

### Students' Rights and Privacy Act

Employees of Bishop State Community College have an important responsibility to students under the Family Educational Rights and Privacy Act (FERPA). It is important that faculty understand their role as guardians of the students' right to privacy. The following are some provisions of the Family Educational Rights and Privacy Act.

1. Instructors and counselors may keep private notes on students; however, FERPA allows limited access to these notes. If faculty discuss this information with one person other than a substitute who needs to know, unauthorized access has been allowed.
2. Faculty should not disclose any personal information about a student to anyone outside this institution. This includes parents and trusted friends. All such disclosures are subject to written approval by students; therefore, all requests for disclosure of any kind should be referred to the Registrar's Office. Though FERPA allows for the release of "directory information" on students, it is the faculty member's responsibility to ascertain if the student has made a written request to the Registrar that the College not release such information. Within this limitation, it is preferable that all faculty refer such questions of "directory information" to the Registrar unless the request is accompanied by a signed release from the student.
3. Work-study students who have access to any type of student information shall be informed of the seriousness of revealing student information to other parties.
4. Instructors should note that students must be allowed access to academic records and may challenge their content. Therefore, it is incumbent upon faculty to maintain clear and accurate records that can be explained and justified.
5. Grades should not be posted.
6. Anyone having an access code to the computer system should not share it unless specifically authorized. A student worker should never have access to an access code.

## 406: Policy Against Harassment and Discrimination

---

### Introduction

The College is committed to providing both employment and educational environments free of harassment and discrimination related to an individual's race, color, gender, religion, national origin, age, disability, and any other characteristic protected by law. Any practice or behavior that constitutes harassment or discrimination shall not be tolerated on any campus or site or in any division or department by any employee, student, agent, or non-employee on College property, and/or while engaged in any College sponsored activities. It is within this commitment of providing a discrimination and harassment free environment and in keeping with the efforts to establish an employment and educational environment in which the dignity and worth of members of the College community are respected, that discrimination and harassment of students and employees is unacceptable conduct and shall not be tolerated at the College.

Employees shall adhere to the highest ethical standards and professionalism and refrain from any form of harassment or discrimination. Any practice or behavior that constitutes harassment or discrimination shall not be tolerated. Employees found in violation of this policy shall be disciplined as appropriate to the severity of the offense.

Harassment can be defined as but is not limited to:

- Disturbing conduct which is repetitive;
- Threatening conduct;
- Intimidating conduct;
- Inappropriate or offensive slurs, jokes, language, or other verbal, graphic or other like conduct relating to an individual's race, color, gender, religion, national origin, age, or disability, or other protected characteristic;
- Unwelcome sexual advances or requests for sexual favors, and other verbal, graphic, or physical conduct of a sexual nature;
- Assault;
- Repeated contact solicited during non-traditional business hours which may be perceived as harassment by the recipient unless it is specifically associated with work related duties.

Any employee who believes they have been the victim of or becomes aware of any discrimination or harassment shall report the incident to the person(s) designated in the reporting section below. No employee should assume that an official of the College knows about his or her particular situation or observations.

## Definition of Sexual Harassment

Sexual harassment is a form of sex discrimination which is illegal under Title VII of the Civil Rights Act of 1964 for employees and under Title IX of the Education Amendments of 1972 for students. Sexual harassment does not refer to occasional compliments; it refers to behavior of a sexual nature which interferes with the work or education of its victims and their co-workers or fellow students. Sexual harassment may involve the behavior of a person of either sex against a person of the opposite sex or the same sex, and occurs when such behavior constitutes unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature, when perceived by the recipient that: Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or educational opportunities; or submission to or rejection of such conduct is used as the basis for employment or academic decisions affecting that individual; or such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, or creates an intimidating, hostile, or offensive work or educational environment.

Sexual harassment can be verbal, visual, or physical. It can be overt, as in the suggestions that a person could get a higher grade or a raise by submission to sexual advances. The suggestion or advance need not be direct or explicit; it can be implied from the conduct, circumstances, and relationship of the individuals involved. Sexual harassment can also consist of persistent, unwanted attempts to change a professional or educational relationship to a personal one. Sexual harassment is distinguished from consenting or welcome sexual relationships by the introduction of the elements of coercion; threat; unwelcome sexual advances; unwelcome requests for sexual favors; other unwelcome sexually explicit or suggestively written, verbal, or visual material; or unwelcome physical conduct of a sexual nature. Examples of verbal or physical conduct prohibited within the definition of sexual harassment include, but are not limited to:

- Physical assault;
- Direct or implied threats that submission to or rejection of requests for sexual favors will affect a term, condition, or privilege of employment or a student's academic status;
- Direct propositions of a sexual nature;
- Subtle pressure for sexual activity;
- Repeated conduct intended to cause discomfort or humiliation, or both, that includes one or more of the following: (i) comments of a sexual nature; or (ii) sexually explicit statements, questions, jokes, or anecdotes;
- Repeated conduct that would cause discomfort and/or humiliate a reasonable person at whom the conduct was directed that includes one or more of the following or similar acts:
  - Touching, patting, pinching, hugging, or brushing against another's body;
  - Commentary of a sexual nature about an individual's body or clothing; or
  - Remarks about sexual activity or speculations about previous sexual experience(s);
- Intimidating or demeaning comments to persons of a particular sex, whether sexual or not;
- Displaying objects or pictures which are sexual in nature that would create a hostile or offensive employment or educational environment, and serve no educational purpose related to the subject matter being addressed.

## **Reporting and Resolution of Harassment and Discrimination Complaints**

### **Procedure for Reporting Complaints**

Any employee who believes that they have been the victim of illegal discrimination or harassment, including sexual harassment, should immediately bring the matter to the attention of his/her supervisor, the Human Resources Director, or the Title IX Coordinator. The complaint will be forwarded to the Title IX Coordinator. The President shall be promptly notified of the complaint. The Title IX Coordinator and/or such other person(s) designated by the President shall meet and interview the complainant. During this initial meeting, in addition to gathering information needed to initiate an investigation into the complaint, the Title IX Coordinator and/or other designated person shall explain the procedure and shall present a copy of this Harassment and Discrimination Policy to the complainant. The complainant should present the complaint as promptly as possible after the alleged discrimination or harassment occurs. The complainant should submit a written statement of the allegations.

It is the intention of this policy to resolve complaints of sexual harassment and illegal discrimination as promptly as possible after the complaint and/or report is made. All complaints and/or reports will be investigated and resolved within forty-five (45) days of receipt, except in extraordinary cases that require more time for completion of the investigation. Both the complainant and alleged offender shall be given periodic updates as to the status of the investigation.

The investigation record shall consist of formal and informal statements from the alleged victim, the alleged offender, witnesses identified by the victim or offender, and others deemed by the investigator to have pertinent knowledge of the facts involved in the complaint. The investigation will afford the accused a full opportunity to respond to the allegations.

Complaints may be resolved through informal or formal procedures. Informal means are encouraged at the beginning, but the choice of where to begin rests with the complainant. If the Title IX Coordinator or the person designated by the President to handle the complaint believes that the matter is sufficiently grave because of the nature of the alleged offense or because the complainant seeks to have a sanction imposed, then formal procedures shall be initiated.

## **Informal Procedures**

1. The Title IX Coordinator may notify the alleged offender of the complaint and take whatever steps deemed appropriate to affect an informal resolution that is acceptable to both parties.
2. The parties may choose to participate in mediation. If the complaint is resolved informally, no record of the complaint will be entered in the alleged offender's personnel file. However, the Title IX Coordinator will keep a record of the complaint and the resolution. All such records will remain confidential.
3. If the results of the investigation and informal resolution of the complaint are accepted by the alleged victim and he or she desires no further action against the alleged offender, then no further action will be taken. The alleged offender will receive a statement explaining the resolution of the investigation as conducted under this policy and procedure.
4. Some reports of sexual harassment or discrimination may not be appropriate for informal resolution and may require a formal investigation at the discretion of the Title IX Coordinator, or the person designated by the President to coordinate the investigation of the complaint. Substantial weight will be given to the wishes of the complainant when determining whether to investigate a complaint. However, the College may investigate a complaint without the complainant's and /or alleged victim's consent when circumstances so warrant.

## **Formal Action**

If the complaint cannot be resolved on an informal basis, the procedures outlined in the Employee Grievance Policy will be followed.

It is the intent of this policy to provide a prompt and thorough investigation of any complaints. The time limits set forth herein are subject to change as needed to ensure a thorough and satisfactory conclusion to the investigation and review process.

## **Confidentiality and Assurance Against Retaliation**

Efforts will be made to ensure confidentiality of information received as part of an investigation. Complaints will be handled on a "need to know" basis with a view toward protecting the interests and ensuring fair treatment of all parties involved.

This policy seeks to encourage employees to express freely, responsibly, and in an orderly way, opinions and feelings about any problem or complaint of harassment or discrimination. An employee bringing a complaint or assisting in investigating a complaint will not be adversely affected in terms or conditions of employment. Any act of reprisal, including but not limited to internal interference or coercion, shall subject the offender to appropriate disciplinary action. Any reprisals shall be reported immediately to the employee's supervisor, the Human Resources Director, or the Title IX Coordinator

**Disciplinary Sanctions**

Any violation of this policy shall subject the offender to appropriate disciplinary action, up to and including dismissal of employment. Failure to act, which includes initial investigation, shall be deemed in direction violation of this policy.

**Distribution of Policy and Training**

This policy shall be distributed and communicated in a manner which provides all interested parties the opportunity to be informed. The College will provide annual training related to harassment, including sexual harassment, to assist the College community in understanding, preventing, and combating harassment.

## **407: Employee Grievance Policy**

---

### **Employee Grievance Policy (Adopted – August 11, 2017)**

Any employee who claims a grievance (or who is reporting an observed grievance) must file a written statement or complete an Employee Grievance Form within a reasonable time from the date of the alleged incident.

The employee must submit their written statement or completed Employee Grievance Form to his/her direct supervisor, unless the direct supervisor is the alleged offender. In such cases, the employee must file the statement with the next supervisor in line. The supervisor (or other person receiving a written grievance) will notify the Title IX Coordinator, Human Resources Director, and/or President as appropriate.

The supervisor, or other person appointed to address the grievance, must review the written statement and conduct an investigation of the claims within 30 days or as otherwise agreed. The supervisor or other person appointed to address the grievance must then make a written report of findings/decision and provide to the employee within 45 days of receipt of the grievance. The employee must, within 10 calendar days of the written report, provide specific written objections to the report of findings/decision to the supervisor or other appointed person, which will be considered a request for appeal. Failure to timely provide the specific written objections is a waiver of the employee's right to appeal the findings/decision.

All appeals will be sent to the President or his/her designee, and the President or his/her designee will convene a three person grievance committee to hear the appeal within 30 calendar days. The President or his/her designee will appoint one person to sit on the grievance committee, and the President will allow both the aggrieved and accused to select an employee of the College to sit on the grievance committee (excluding the President and his/her designee). Should the aggrieved or accused fail to select a member of the grievance committee in the time period required by the President or his/her designee or the selected employee does not agree to participate as a member of the grievance committee in the time required by the President or his/her designee, then the President or his/her designee will select the grievance committee member. The President shall have discretion to require the aggrieved and/or accused to select substitute employees to sit on the grievance committee when it reasonably appears that their selected employees may have a conflict of interest, close relationship, or other situation calling into question their neutrality.

The grievance committee will hold a hearing and allow the aggrieved employee to present the grievance and the accused will have an opportunity to respond within 45 days of the appeal. The grievance committee will also have access to the original grievance, report of the supervisor/other designee, and appeal notice by the employee. The grievance committee will provide its findings and decision following the hearing in a timely manner. Either party will have 10 calendar days from receipt to file a written appeal to the grievance committee decision. If timely appealed, the President will issue a final decision based on the original grievance, report of the supervisor/other designee, appeal notice by the employee, and grievance committee decision.

**NOTE:** If the last day for filing notice of appeal falls on either Saturday, Sunday, or a legal holiday, aggrieved will have until 5:00 p.m. the first working day following the 10th calendar day to file

**Instructions: Employee Grievance Form**

**To employee filing the report:** Complete and deliver this report to your direct supervisor, unless your direct supervisor is the alleged offender. If that is the case, deliver the form to the next supervisor in your chain of command who is not an alleged offender. Once you receive a report of findings/decision, you must within 10 calendar days provide specific written objections, if any, to the President, in order to appeal the matter and receive a grievance committee panel. Failure to timely provide the specific written objections is a waiver of the employee's right to appeal the supervisor's findings/decision.

**To College official receiving the report:** (1) Notify any appropriate personnel of the grievance (the Title IX Coordinator, Human Resources Director, and/or President); (2) Review the written statement and conduct an investigation of the claims within 30 calendar days or as otherwise agreed; (3) Prepare a written report of findings/decision and provide to the employee within 45 calendar days of receipt of the grievance; and (4) Advise the employee of the 10 calendar day deadline to appeal your report to the President.

(See Employee Grievance Form Below)

# Bishop State Community College

## EMPLOYEE GRIEVANCE FORM

*This form should be completed by the aggrieved employee and delivered to the appropriate supervisor in the employee's chain of command.*

Name of Person Making Grievance: \_\_\_\_\_

Address to send correspondence: \_\_\_\_\_

Telephone number: \_\_\_\_\_ Email address: \_\_\_\_\_

Name of person your grievance is against? \_\_\_\_\_

What date/s did the actions occur? \_\_\_\_\_

What do you allege occurred? (Please be specific, provide details, and use the reverse of this sheet if needed)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is there a specific law or College/ACCS policy/guideline that you believe has been violated? \_\_\_\_\_

If so, which one/s? \_\_\_\_\_

\_\_\_\_\_

In your opinion, what could be done to reasonably resolve this grievance? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
*This section should be completed by the college official who receives the form.*

\_\_\_\_\_  
Signature of College Official Receiving Form

\_\_\_\_\_  
Date Form Receive

