

# GENDER DISCRIMINATION AND SEXUAL MISCONDUCT ADDENDUM

## Overview of Expectations with Respect to Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals with unequal authority (such as an Instructor and student or supervisor and employee). These relationships may be less consensual than perceived by the individual whose position has the authority. Each of the individuals, particularly in retrospect, also may view the relationship in different ways. Furthermore, circumstances may change, and conduct previously welcomed may become unwelcome and a consensual romantic or sexual relationship may no longer be consensual for both individuals. For the personal protection of all individuals associated with BTC, relationships in which there may be a real or perceived authority (Instructor-student, staff-student, administrator-student) are prohibited.

A consensual romantic or sexual relationship in which there is a direct supervisory or evaluative role over another individual is in violation of the Code of Conduct. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the immediate attention of their supervisor so arrangements to remedy the supervisory or evaluative conflict can be implemented.

## Definitions

In addition to the following definitions, the Wisconsin statutory definitions of violent acts against women are included in the appendix of this policy.

### Student

Any person who is currently attending and/or enrolled for a course of study, including continuing education, adult and basic skills education, and credit programming with Blackhawk Technical College.

### Consent

Consent is informed, knowing and voluntary participation in any desired sexual activity. Sexual intimacy requires that all participants consent to the activity. Consent between two or more people is defined as an affirmative agreement to engage in sexual activity. Consent can be given by words or actions, as long as those words and actions create a clear and mutually understandable permission regarding the conditions of sexual activity. The person giving the consent must act freely, voluntarily, and with an understanding of his or her actions when giving consent. Lack of protest or resistance does not constitute consent, and silence alone cannot be interpreted as consent. Relying solely on non-verbal communication can lead to misunderstanding. Persons who want to engage in sexual activity are responsible for obtaining consent—it should never be assumed. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity. Previous relationships or consent cannot imply consent to future sexual acts.

Consent must be present throughout the sexual activity – at any time, a participant can communicate that he or she no longer consents to continue the activity. If there is confusion as to whether anyone has consented or continues to consent to sexual activity, it is essential that the participants stop the activity until the confusion can be clearly resolved.

A person who is incapacitated cannot give consent to engage in sexual activity. The issue is whether a reasonable unimpaired person would

know that the other person was incapacitated. Incapacitation can result from alcohol or other drug use, unconsciousness, blackout, mental disability, sleep, involuntary physical restraint, or from being drugged. A respondent cannot defend a violation of this policy by claiming that he or she was impaired from alcohol or drug use and unable to tell whether the complainant was incapacitated.

Wisconsin law also states the following individuals are not able to provide consent:

- Individuals who are asleep or unconscious
- Individuals who are unable to communicate consent because of a mental or physical condition
- Generally minors under the age of 16

Blackhawk may conclude that an instance of sexual contact was sexual assault, because it was without another person's consent, even if that conduct would not meet the standard of a criminal sexual assault. For example, it is possible the College would conclude under some circumstances that a person who was intoxicated on alcohol could not consent, and therefore, did not give consent to sexual contact, even though the criminal courts might not reach the same conclusion.

### Coercion

Coercion is defined as compelling someone to act based on:

- An unreasonable amount of pressure
- Harassment
- Threats
- Intimidation

When someone makes clear that he or she does not want to engage in sexual conduct, wants it to stop, or does not wish to go past a certain point of sexual interaction, continued pressure beyond that point is coercive.

### Retaliation

Retaliating directly or indirectly against a person who has, in good faith, filed, supported, or participated in an investigation of a complaint of sexual misconduct, as defined above, is prohibited. Retaliation includes, but is not limited to, ostracizing the person, pressuring the person to drop or not support the complaint, or to provide false or misleading information, or engaging in conduct that may reasonably be perceived to affect adversely that person's educational, living, or work environment. Retaliation also includes similar conduct engaged in by a third party at the complainant's or respondent's request. Depending on the circumstances, retaliation may be unlawful and may constitute a violation of this policy, whether or not the Title IX complaint is ultimately found to have merit.

### Hate Crime

The victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

### Bystander Intervention

Bystander intervention gives responsibility to all members of the college community to help ensure the safety of all members within the college. The intervention may be as simple as providing words of support to another student or a faculty or staff member. It may mean more involved

behaviors to let people know that action will be taken. The goal of bystander intervention is to change passive bystanders into active bystanders who feel confident in their ability to "discourage, prevent, or interrupt" a sexual violence incident. Bystander intervention helps grant people the self-efficacy to stand up and speak up when a person is being harassed or assaulted.

### **Sexual Misconduct**

Sexual misconduct is a broad term encompassing any non-consensual behavior of a sexual nature that is committed by force or intimidation, or that is otherwise unwelcome. Sexual misconduct includes:

- Sexual assault
- Sexual exploitation
- Sexual harassment
- Stalking
- Relationship violence (domestic and dating)
- Hostile environment

Sexual misconduct may vary in its severity and consists of a range of behaviors or attempted behaviors. It can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can occur between members of the same or different gender and can occur while individuals are fully clothed.

### **Sexual Assault**

Sexual assault is defined very broadly by criminal law. It includes a wide variety of conduct from sexual intercourse to sexual contact, without the consent of the other person. Criminal sexual contact can be as limited as a single instance of touching a woman's breast, buttocks, or genital area, or touching a man's buttocks or genital area, without that person's consent, even if the person touched is fully clothed. Other examples of sexual assault include:

- Rape
- Acquaintance rape
- Forcible fondling
- Sodomy (oral or anal intercourse)
- Sexual penetration with an object

### **Sexual Exploitation**

Sexual exploitation involves taking non-consensual sexual advantage of another person, even though the behavior might not constitute one of the other sexual misconduct offenses. Examples can include, but are not limited to the following behaviors:

- Distribution or publication of sexual or intimate information about another person without consent, including by means of social media
- Electronic recording, photographing or transmitting sexual or intimate utterances, sounds, or images without knowledge and consent of all parties
- Engaging in indecent exposure
- Voyeurism – Voyeurism involves both secretive observation of another's sexual activity and secretive observation of another for personal sexual pleasure
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex)

### **Sexual Harassment**

Sexual harassment is defined as unwelcome, gender-based verbal or physical conduct that is sufficiently severe, persistent or pervasive that has the effect of unreasonably interfering with, denying or limiting someone's ability to participate in, or benefit from the College's educational program and/or activities and is based on power differentials. This policy prohibits conduct that would violate Federal and State laws. Sexual harassment includes:

- Unwelcome sexual advances or requests for sexual favors
- Unwelcome verbal or physical conduct of a sexual nature
- Making a submission to, or rejection of, such conduct a factor in academic or employment decisions affecting the student or employee
- Permitting such conduct to unreasonably interfere with a student's academic performance or an employee's work performance
- Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature or submission to or rejection of such conduct results in adverse educational or employment action (Quid pro quo)
- Adverse educational or employment action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct (retaliatory harassment)

Examples of Sexual Harassment:

- An instructor insists that a student have sex with him or her in exchange for a good grade. This is harassment regardless of whether or not the student submits to the request
- A student repeatedly sends sexually oriented jokes through social media, even when asked to stop, causing one recipient to avoid the sender
- Explicit sexual pictures are displayed in an instructor's office, on a bulletin board in a lab or on a computer monitor in a public space
- An instructor engages students in discussions about their past sexual experiences, yet the conversation is not in any way relevant to the subject matter of the class. An instructor probes for explicit details and demands that students answer although they are clearly uncomfortable and hesitant
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend turning him into a social outcast on campus

### **Stalking**

Stalking involves harassment, intimidation, surveillance or a similar course of repeated conduct that is intended to cause a reasonable person to fear for his or her safety or suffer substantial emotional distress, serious physical injury, or death. Stalking includes conduct directed at the victim's immediate family, a spouse or intimate partner. Stalking can also be a form of sexual harassment and/or it can involve a total stranger.

### **Relationship Violence**

Relationship violence is conduct in which the parties involved know each other or had a prior relationship and may include acquaintance rape, dating violence, and domestic violence.

Domestic Violence refers to violence committed by a:

- Current or former spouse or intimate partner
- Current or former cohabitant

- Person with whom a victim shares a child in common
- Person similarly situated to a spouse under domestic or family violence law
- Anyone else protected under domestic or family violence law

### Dating Violence

Dating violence is inappropriate conduct when the parties involved are, or have been, in a romantic or intimate relationship and does not include a causal relationship between two individuals in a business or social context. Whether a relationship exists will depend on the length, type, and frequency of interaction.

### Hostile Environment

Hostile environment includes any situation in which there is harassing conduct that is sufficiently severe, persistent or pervasive such that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

The determination of whether an environment is "hostile" must be based on all of the circumstances listed here. These circumstances may include, but are not limited to:

- The frequency of the conduct
- The nature and severity of the conduct
- Whether the conduct was physically threatening
- Whether the conduct was humiliating
- The effect of the conduct on the alleged victim's mental or emotional state
- Whether the conduct was directed at more than one person
- Whether the conduct arose in the context of other discriminatory conduct
- Whether the conduct unreasonably interfered with the alleged victim's educational or work performance

### Other Misconduct Offenses (when gender-based)

Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally.

### Non-Confidential Reporters

All College employees have an obligation to report to a Title IX Coordinator, information regarding sexual misconduct incidents made known to them, or that they have reasonable cause to suspect that such conduct might have occurred. Employees are required to caution students about confidentiality issues and to advise students that the employee is required to report potential or alleged violations of this policy. Even if a student refuses to file a complaint with the College or the police or participate in a disciplinary proceeding, the College may need to further investigate reports of sexual misconduct. To the extent possible, student privacy will be maintained and information will only be shared with individuals on a "need to know" basis.

If you are unsure of someone's responsibilities and duties for maintaining your privacy, ask them BEFORE you talk to them. They should be able to tell you and help you make decisions about who can best help you while maintaining your privacy.

### Training

Sexual misconduct awareness and prevention training take place during Fast Track Days for new students. Additional training and offerings are available online and through Career Services and Leadership Development activities and programming. Resources and training materials can be found on the College website, MyBTC and other publications. In accordance with the College's mission and vision, as well as Federal guidelines, training about the policy and procedures regarding sexual assault and relationship violence is required for all students, instructors, and staff. Best practices identified through the United States Department of Education and Violence Against Women Act (VAWA) are used to develop awareness programming.

Bystander Intervention training will provide resources to assist students when faced with a situation and to safely intervene if someone is at risk of being assaulted. In addition, the College will periodically conduct a campus climate survey to gain a stronger understanding of social issues impacting students, and the effectiveness of College prevention efforts, policies, and resources that address them.

### Blackhawk Policy Application

The College's policy to address cases of alleged sexual misconduct is designed to:

- Consider the rights of the complainant, the rights of the respondent, the safety of the community, and compliance with applicable laws and College policies
- Conduct a timely, fair, impartial, and equitable investigation and adjudication process with thoroughness and respect for all involved parties
- Protect the privacy of all parties to the extent it is practical while balancing the need to perform an investigation, follow the procedures outlined below, comply with applicable law, and maintain campus safety
- Provide appropriate remedies and sanctions to address the discriminatory effects of sexual misconduct on the complainant and others
- Support the needs of the complainant and respondent in the areas of emotional and mental health, physical well-being, and safety from future violence or retaliation

Blackhawk specifically prohibits all forms of sexual misconduct and violence including, but not limited to, rape, acquaintance rape, sexual assault, sexual harassment, dating violence, domestic violence, stalking, and hate crimes between or against members of its college community. This policy will apply regardless of whether a criminal proceeding has been initiated, the conduct occurred on campus, or involved a College-sponsored activity. The College will respond appropriately to address violations of this policy in a manner that is reasonable to prevent such conduct from recurring and to minimize the effects on victims and the College community. Retaliation for filing a report or complaint or for participating in a related investigation or disciplinary proceeding is also a violation of this policy.

In instances where a complaining party insists on confidentiality, it may limit the College's ability to respond. Depending upon the circumstances, the College may not be able to ensure confidentiality because of its obligation to provide a safe and nondiscriminatory environment for all students. Factors that may impact the request include the seriousness of the alleged conduct and whether there have been other complaints

about the same individual. Confidential resources available to consult with students are listed in this policy.

Once a Blackhawk employee (non-confidential reporter) either has been told or should have known about an incident(s) of sexual harassment or sexual misconduct, the College will:

- Take immediate and appropriate steps to investigate what occurred
- Take prompt and effective action to:
  - Stop the harassment
  - Remedy the effects of the behavior
  - Prevent the recurrence of said behavior