04.130 STUDENT GENDER-BASED/SEXUAL MISCONDUCT POLICY (including Dating Violence, Domestic Violence and Stalking)

Authority: Chancellor

History: Reformatted July, 2005; Revised July 31, 2012, Revised August 18, 2014, Revised January 2015; January 1, 2016

Source of Authority: 20 U.S.C. §1092(f) (also known as The Clery Act) and Title IX

Related Links: Harassment Prevention; Harassment Resolution Procedures, UNCW Police (http://www.uncw.edu/ba/police/)

Responsible Office: Vice Chancellor for Student Affairs

I. INTRODUCTION

UNCW is committed to providing programs, activities and an educational environment free from sex discrimination, and expects all members of its community to act in a respectful, responsible and civil manner towards one other. The Student Gender-Based/Sexual Misconduct Policy sets forth resources available to students, describes prohibited conduct, and establishes procedures for responding to reports of gender-based/sexual misconduct (including sexual harassment, sexual assault and other unwelcome sexual and gender-based behaviors).

If you are consulting this policy because you have been the victim of abuse or assault, please also refer to http://uncw.edu/care/forVictimsWhatToDo.htm for additional information on steps to consider in the immediate aftermath of an incident, or call a confidential CARE Advocate, available 24 hours a day, at 910-512-4821.

As a recipient of Federal funds, the university is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S. C. § 1681 *et seq*. ("Title IX"), which prohibits discrimination on the basis of sex in education programs or activities. Sexual misconduct, as defined in this policy, is a form of sex discrimination prohibited by Title IX. As explained in Section V of this policy, gender-based misconduct, sexual misconduct, sexual harassment, dating violence, domestic violence and stalking are all forms of misconduct prohibited by this policy. All such forms of misconduct are referred to generally as "gender-based/sexual misconduct" throughout this policy.

This policy addresses complaints of gender-based/sexual misconduct where the victim (complainant) and accused (respondent) are enrolled as students at UNCW. Complaints relating to sexual misconduct by a member of the university faculty or staff should be reported to the university's Title IX Coordinator, University Police or the Office of Human Resources. Complaints relating to sexual misconduct by a non-university member should be reported to the law enforcement agency of the jurisdiction in which the misconduct took place. Details regarding UNCW's policy for employee harassment may be found at http://www.uncw.edu/policies/conduct.html.

II. PURPOSE

Acts of gender-based discrimination, harassment and sexual misconduct, including dating violence, domestic violence and stalking, will not be tolerated at UNCW. In order to provide a safe campus community within which all members are valued and respected, policies and procedures for

addressing gender-based/sexual misconduct have been established in accordance with Title IX requirements and are detailed herein.

This policy applies regardless of the victim's or respondent's sexual orientation, sex, gender identity, gender expression, age, race, nationality, class status, ability or religion.

Anyone wishing to make a complaint of gender-based/sexual misconduct by an enrolled student at UNCW should contact the university's Title IX Coordinator, University Police, and/or the Office of the Dean of Students. UNCW provides confidential resources, support, and advice to students through UNCW CARE, the Counseling Center, and the Abrons Student Health Center. (A list of resources and relevant contact information are included on the last page of this policy.) Reports may also be made online at http://www.uncw.edu/sexualmisconduct.

Any university employee, faculty/instructor, staff, administrator or person working on behalf of an officially sanctioned university office, event or activity, including resident assistants ("responsible employees"), receiving notice of gender-based/sexual misconduct is required to file a report with the Title IX Coordinator within one (1) business day of receiving the notice, unless that notice was communicated to an official who can provide professional confidentiality (see "Confidentiality Resources" below). Clery Act crime statistic and timely warning reporting duties must also be observed (as explained in Section VI.C. below). Allegations of gender-based/sexual misconduct by a student will be promptly investigated, findings will be issued, acts of discrimination will be redressed, and appropriate remedial action will be taken.

In addition to violating university policy, gender-based/sexual misconduct may also constitute criminal activity. Victims are encouraged to inform law enforcement authorities about instances of sexual misconduct. The chances of a successful criminal investigation are greatly enhanced if evidence is collected and maintained by law enforcement immediately following an assault. Victims may inform law enforcement officers without making a criminal or university complaint. Victims who make a criminal complaint may simultaneously pursue a university complaint. The University can assist victims in making a complaint to law enforcement officials.

A. JURISDICTION

The university may respond formally to alleged incidents of gender-based/sexual misconduct:

1. that occurred on campus; or
2. that were part of official university programs (regardless of location); or
3. when the victim and respondent are UNCW students.

B. LIMITATION PERIOD

Students who are victims of gender-based/sexual misconduct are encouraged to file complaints as soon as possible in order to maximize the university's ability to provide support, obtain evidence and conduct a thorough, impartial and fair investigation; however, there is no period of limitations. A complaint may be filed at any time while the respondent is enrolled as a student at UNCW, regardless of the length of time between the alleged misconduct and the decision to file a complaint. Failure to promptly report may result in the loss of relevant evidence and witness testimony and may impair the university's ability to effectively enforce this policy and assign appropriate remedies.

C. CONFIDENTIAL RESOURCES

If a victim prefers the details of an incident to be kept confidential, they can speak to professional staff in the following offices:

- UNCW Collaboration on Assault Response & Education (CARE)
- UNCW Counseling Center
- Abrons Student Health Center

Additionally, the Rape Crisis Center, Domestic Violence Shelter and Services and campus ministers will honor confidentiality. Confidential resources may need to share otherwise confidential information in a situation where an imminent danger to a victim or another individual exists in the opinion of the professional staff or administrator. In addition, all university resources are required by North Carolina law to report abuse or neglect upon a child or any disabled person and to report non-identifying statistical information as required by the Clery Act.

Public awareness events such as "Take Back the Night" or other forums at which students disclose experience with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the victim initiates a complaint.

Research involving human subjects (which require approval by UNCW's Institutional Review Board for the Protection of Human Subjects) may ask subjects to provide personal information in a confidential setting. Information about an incident covered under this policy may be disclosed by a research subject as part of participation in that research. Researchers involved in the research shall not report the incident to the Title IX Coordinator.

III. ADVOCACY & SUPPORT SERVICES

No person should bear the effects of gender-based/sexual misconduct, dating violence, domestic violence and stalking alone. The safety, health and well-being of community members impacted by gender-based/sexual misconduct are of paramount concern; therefore, UNCW offers a range of services and resources to address these needs and support students affected by gender-based/sexual misconduct, dating violence, domestic violence or stalking.

Through UNCW CARE, the university's violence prevention and intervention program, the university provides confidential consultation and victim advocacy services to students who have experienced gender-based/sexual misconduct, dating violence, domestic violence, stalking, or harassment. CARE responds to students who have been victimized, as well as those affected by someone else's experience with abuse or assault. CARE provides supportive services, including crisis response, individual advocacy and accompaniment services, acts as an advisor in the campus conduct system, and, coordinates with both on-campus and off-campus resources.

CARE's Victim Advocates will inform and counsel victims of their rights and available resources to help empower victims to make informed decisions and choices in responding to and coping with the effects of sexual misconduct. Victims can also access victim advocacy via the Rape Crisis Center and Domestic Violence Shelter and Services. Advocates assist victims, but the choice of what actions to pursue belongs solely to the victim. A Victim Advocate from CARE is available at any time, and contact information can be found on the last page of this policy. Additional information for victims is available at www.uncw.edu/care.

Support services for students who are respondents of (charged with) sexual misconduct are available, including an advisor from the Office of the Dean of Students and the confidential resources of the Counseling Center and Abrons Student Health Center.

A student experiencing sexual misconduct or physical abuse is strongly encouraged to seek medical attention. Victims are encouraged not to bathe, douche, brush their teeth, drink, change clothing or even comb their hair before seeking medical attention. It is only natural to want to do so, but doing so may destroy physical evidence that could be needed later if charges are pursued. Even if one bathes or washes, evidence can still be collected at the hospital, preferably within 120 hours of an assault. Evidence collection is not essential for pursuing a campus conduct process, but there are still good reasons to seek medical treatment such as to address the possibility of pregnancy, detect and prevent sexually transmitted infections, and to treat any physical injuries. One may have sustained injuries that they may not realize occurred during the assault.

- Evidence collection and emergency treatment is available 24 hours a day at the local emergency rooms (see Resources below).
- The Abrons Student Health Center can provide victims with immediate care or subsequent follow-care.
- The North Carolina Rape Victims Assistant Program and Crime Victims Compensation Act cover most, if not all, medical costs related to rape.
- Law enforcement will be called to the hospital, but a victim is not obligated to talk to them.

If a victim wants to pursue criminal charges, they should contact UNCW Police at 910-962-2222, or emergency 911. UNCW Police can assist victims in identifying and contacting the appropriate law enforcement agency. Advocates from UNCW CARE are available to give victims information about the criminal prosecution process, assist victims in notifying appropriate law enforcement agencies, accompany victims to interviews and act as a resource for the victim with off-campus agencies associated with criminal prosecution.

In addition to victim advocacy services and law enforcement, the university's support services include, but are not limited to:

- Counseling services for students who have been assaulted or who have concerns regarding gender-based/sexual misconduct, dating/domestic violence or stalking.
- Referral to off-campus agencies that provide services for students who have experienced gender-based/sexual misconduct, dating violence, domestic violence or stalking.
- Assistance to students who have been sexually assaulted or experienced other gender-based/sexual misconduct, dating violence, domestic violence or stalking in obtaining medical services.
- Procedures for campus conduct action when students who have been the victim of gender-based/sexual misconduct, dating violence, domestic violence or stalking wish to pursue formal resolution by the university, including administrative orders of no contact between parties or reassignment of campus housing.
- Assistance to students who have been sexually assaulted or experienced other gender-based/sexual misconduct, dating violence, domestic violence or stalking in pursuing criminal action against their assailants, including assistance pursuing a protective order issued by the courts.
- Year-round primary prevention and education programs, awareness events and print and video resources addressing a variety of topics related to gender-based/sexual misconduct, dating/domestic violence, or stalking. These programs include education for new students, risk reduction strategies, bystander intervention trainings and campaigns, and emerging and established evidence-based prevention efforts. These efforts are designed to stop dating/domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.
- Training of students, faculty, and staff on relevant resources, policies and reporting obligations. Additional specialized training is given to those officials participating in the investigation and adjudication of complaints of gender-based/sexual misconduct at least annually regarding issues related to domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

A. ACADEMIC ACCOMMODATIONS AND INTERIM MEASURES

Academic accommodations and other interim remedies may be requested and honored, if reasonably available, regardless of whether the victim chooses to report the crime to university police or local law enforcement or proceed with a university investigation. When necessary the university will take immediate steps to protect a victim pending the final outcome of an investigation, including academic accommodations and other interim measures. Academic accommodations and interim measures provided to students will be maintained as confidential to the extent possible.

Academic accommodations and interim measures will be made on a case by case basis and may include, but are not limited to:

- reassignment of housing assignment
- changing work schedules
- altering academic schedules
- accessing academic support (tutoring)
- obtaining an administrative order of no contact which states that students may by no means communicate with, directly or indirectly, another student listed by the university

B. AMNESTY

The university community encourages the reporting of *Code of Student Life* violations, especially sexual misconduct. Sometimes victims are hesitant to report to university officials because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interests of the university community that as many victims as possible choose to report to university officials. Any individual, including the victim, a witness or a third party who makes a report will not be subject to disciplinary action by the University for their own personal consumption of alcohol or other drugs at or near the time of the incident, providing that any such violations did not harm or place the health or safety of any other person at risk.

IV. TITLE IX COORDINATOR

The Title IX Coordinator has primary responsibility for overseeing all aspects of compliance with Title IX and related regulations across the institution, including but not limited to: Recruitment, Admissions, Financial Aid, Athletics, Sex-Based Harassment, Pregnant and Parenting Students, Investigations and Adjudication procedures, Academic and Extracurricular Activities and Employment.

The Coordinator serves as the point of contact for coordinating the University's efforts in response to all forms of gender-based or sexual equity issues and he/she ensures that the University's response is effective, timely, thorough, and follows all legal mandates. The Title IX Coordinator's core responsibilities related to Gender-Based Sexual Misconduct include overseeing the university's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The Title IX Coordinator may choose an appropriately trained designee(s) as needed.

The Title IX Coordinator is:

Ms. Amber Resetar, Esq.
Director of Title IX and Clery Compliance
Student Affairs
Campus Box 5942
DePaolo Hall Rm 1040
(910) 962-2937
titleix@uncw.edu

Deputy Title IX Coordinator

The role of the Deputy Title IX Coordinator is to coordinate training to students, faculty and staff on student gender based/sexual misconduct issues, facilitate initial intake of cases which may lead to additional investigations- including investigating facts relevant to the complaint- determine appropriate interim measures for a victim upon learning of a report or complaint of sexual misconduct, and ensure that the appropriate grievance process is initiated in response to the complaint. The Deputy Title IX Coordinator may choose an appropriately trained designee(s) as needed. The Deputy Title IX Coordinator is:

Dr. Brian Victor

Associate Vice Chancellor for Student Affairs
Campus Box 5985
DePaolo Hall 2015
(910) 962-7771
TitleIX@uncw.edu

V. DEFINITION OF TERMS

A. SEXUAL MISCONDUCT

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, UNCW has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, UNCW considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion, for students who commit such offenses. However, UNCW reserves the right to impose any level of sanction, ranging from a written warning up to and including suspension or expulsion, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating/domestic) violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular grievance. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. Sexual misconduct occurs when sexual acts are attempted or committed without consent and/or by force, threat, coercion, or pressure, or through the use of the victim's mental or physical helplessness, of which the assailant was aware or should have been aware.

Violations include:

1. **Non-Consensual Sexual Intercourse** is defined as any sexual penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.
2. **Non-Consensual Sexual Contact** is defined as any intentional sexual touching, however slight, with any object by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
3. **Sexual Exploitation** refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, in situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:
    a. sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed);
    b. taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent);
    c. prostituting another student;
    d. engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted infections (STI) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent.

B. CONSENT

The definition of consent is central to the recognition of both sexual assault and sexual misconduct. The university defines consent as mutually voluntary permission to engage in sexual activity

demonstrated by clear actions and/or words. This decision must be made freely, consciously, knowingly and actively by all participants, as shown by the totality of the circumstances.

Intoxication is not an excuse for failure to obtain consent.

Silence, passivity, acquiescence, or lack of active resistance does not constitute or imply consent on its own.

Previous participation in sexual activity, however recent, does not indicate current consent to participate, and consent to one form of sexual activity does not imply consent to another form of sexual activity.

Consent can be withdrawn at any time.

Consent has *not* been obtained in situations where the individual:

1. is forced, coerced (defined as a unreasonable amount of pressure), manipulated, or has reasonable fear as the result of a threat (such as, the individual or another will be injured if the victim does not submit to the act); or
2. is incapacitated by alcohol, other drugs, sleep, etc. Because consent must be given consciously, sexual activity is prohibited with someone one knows to be, or should know to be, incapacitated. Incapacitation means the individual cannot make rational, reasonable and informed decisions; or
3. has a mental or physical disability which inhibits or precludes his/her ability to give knowing consent.

In North Carolina, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, as well as a violation of this policy, even if the minor willingly engaged in the act.

C. DATING VIOLENCE

Dating violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The relationship between the alleged perpetrator and the victim is determined based on the following factors:

1. the length of the relationship;
2. the type of relationship; and/or
3. the frequency of interaction between the persons involved in the relationship.

D. DOMESTIC VIOLENCE

Domestic violence is defined as abuse or violence committed by:

1. a current or former spouse of the victim;
2. a person with whom the victim shares a child in common; and/or
3. a person who is cohabitating with or has cohabitated with the victim as a spouse.

Dating and domestic violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

The state definition of domestic violence can be found in North Carolina General Statute §50B-1 (http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_50B.html), which is applicable to criminal prosecutions for domestic violence in North Carolina, but may differ from the definition used by the university to address policy violations.

E. STALKING

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to feel fear for his or her safety or the safety of others or suffer substantial emotional distress. Substantial emotional distress means significant mental suffering or anguish that

may, but does not necessarily, require medical or other professional treatment or counseling. "Course of conduct" is defined as a pattern of two or more acts over a period of time, however short, that evidence a continuity of purpose. Stalking behaviors include, but are not limited to, the following behaviors if they occur when it is known or reasonably should have been known that such behavior or one's presence is unwanted by a recipient:

1. non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on Web sites, written letters, gifts, or any other communications that are undesired and/or place another person in fear;
2. following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a victim;
3. surveillance and other types of observation, whether by physical proximity or electronic means.

The state definition of stalking can be found in North Carolina General Statute §14-277.3A (http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_14/GS_14-277.3A.pdf) which is applicable to criminal prosecutions for domestic violence in North Carolina, but may differ from the definition used by the university to address policy violations.

F. SEXUAL HARASSMENT

Sexual harassment is a form of sexual misconduct and is defined as any unwelcome conduct of a sexual nature. It may include, but is not limited to:

1. unwelcome sexual advances;
2. requests for sexual favors; and/or,
3. other verbal, non-verbal, or physical conduct of a sexual nature.

Sexual harassment may occur in a single incident, as well as in persistent behaviors. Both men and women are protected from sexual harassment, and sexual harassment is prohibited regardless of the sex of the harasser.

Two Types of Sexual Harassment

1. **Hostile Environment**

   Hostile environment sexual harassment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive/persistent and patently/objectively offensive such that it alters the conditions of education or employment, from both a subjective (the victim's) and an objective (reasonable person's) viewpoint.

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

   a. the frequency of the conduct
   b. the nature and severity of the conduct
   c. whether the conduct was physically threatening
   d. whether the conduct was humiliating
   e. the effect of the conduct on the victim's mental or emotional state
   f. whether the conduct was directed at more than one person
   g. whether the conduct arose in the context of other discriminatory conduct
   h. whether the conduct unreasonably interfered with the victim's educational or work performance
   i. whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness
   j. whether the speech or conduct deserves the protections of academic freedom

2. **Quid Pro Quo**

   Quid pro quo sexual harassment exists when there are:

   a. unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and/or

b. submission to or rejection of such conduct results in adverse educational or employment action.

G. RETALIATION

Retaliation is defined as any form, direct or indirect, including through third parties, of intimidation, threat, coercion or any other type of discrimination in response to an individual's complaint or participation in investigation or conduct processes.

It is a violation to retaliate against any person making a complaint of gender-based/sexual misconduct or against any person cooperating in the investigation, including testifying as a witness. For the purposes of this policy, retaliation includes:

1. intimidation;
2. threats;
3. harassment; and/or
4. any other adverse action taken against any such victim or third party.

Retaliation toward a student who reports sexual misconduct is strictly prohibited. Any act by a respondent, other students or their agents, of reprisal, interference, restraint, discrimination, coercion or harassment against any person using these procedures shall constitute a policy violation and shall be subject to prompt, appropriate and significant disciplinary action.

Retaliation should be reported immediately to the Title IX Coordinator, CARE Advocate, University Police or the Office of the Dean of Students.

H. INTIMIDATION

Intimidation is defined as implied threats or acts that cause a reasonable fear of harm in another and includes, but is not limited to:

1. threatening to commit a sexual act upon another person;
2. stalking; and/or,
3. cyber-stalking.

I. OTHER CIVIL RIGHTS OFFENSES, WHEN THE ACT IS BASED UPON GENDER/SEX

Other offenses include, but are not limited to:

1. Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class.
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class. Discrimination can also involve treating an individual less favorably because of his or her connection with an organization or group that is generally associated with people of a certain protected class.
3. Intimidation, defined as implied threats or acts that cause a reasonable fear of harm in another on the basis of actual or perceived membership in a protected class.
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the UNCW community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the hazing policy) on the basis of actual or perceived membership in a protected class. Hazing is also illegal under North Carolina law and prohibited by UNCW policy.
5. Bullying, defined as repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class.
6. Violation of any other UNCW rules, when such violation is motivated by the actual or perceived membership of the victim on the basis of sex or gender or in a protected class, may be pursued using this policy and process.

VI. REPORTING & CONFIDENTIALITY/PRIVACY

It is important to report any student gender-based/sexual misconduct, dating violence, domestic violence, stalking or harassment as soon as possible, though no formal time limitation is imposed on reporting by the university. There are several ways to take action by filing a:

1. criminal complaint with law enforcement authorities;
2. university complaint; and/or
3. third-party report.

Gender-based/sexual misconduct may constitute both a violation of university policy *and* a criminal offense. The university conduct system is not a substitute for instituting criminal or civil action, so the university encourages victims ("complainants") to report alleged gender-based/sexual misconduct promptly to university officials *and* to local law enforcement.

UNCW Police and CARE are available to assist complainants in making reports to law enforcement agencies based on jurisdictional boundaries.

A. FILING A REPORT

Anyone who would like to make a complaint of gender-based/sexual misconduct by a UNCW student should contact the university's Title IX Coordinator, an advocate in the Collaboration for Assault Response and Education (CARE) Office, University Police, and/or the Office of the Dean of Students. Reports may also be made online at http://uncw.edu/sexualmisconduct.

Any responsible employee university office or employee receiving notice of gender-based/sexual misconduct is required to file a report with the Title IX Coordinator within one (1) business day of receiving the notice, unless that notice is communicated to an official who can provide professional confidentiality (see Confidential Resources herein). Clery Act crime statistic and timely warning reporting duties must also be observed.

Allegations of gender-based/sexual misconduct made by a student against a university employee should be reported to the Title IX Coordinator, University Police, Human Resources or the Office of the Dean of Students in accordance with the university's Harassment Prevention Policy which can be found online at http://www.uncw.edu/policies/conduct.html.

If a criminal complaint is filed in addition to a complaint with the university, the university will not wait for the conclusion of any criminal investigation or proceedings before proceeding with its own investigation. The university may need to temporarily delay the fact-finding portion of the investigation while law enforcement gathers evidence. In the event of such a delay, the university will take interim measures as needed to protect the victim ("complainant") and the university community. The university will promptly resume and complete its fact-finding portion of the investigation once it learns that law enforcement has gathered evidence for the criminal investigation.

B. CONFIDENTIALITY/PRIVACY

In compliance with applicable laws and regulations, the university will take precautions to protect the confidentiality/privacy of both parties. However, complainants should understand that under conditions of imminent harm to the community, the university is obligated by federal law to inform the community of the occurrence for the protection of all members of the community. Additionally, the university cannot control confidentiality violations by non-university members who may be involved as witnesses or participants in an investigation or conduct hearing nor can the university control confidentiality violations by complainants/respondents after they receive outcome notifications.

A complainant may make a request for confidentiality/privacy at any point. This type of request means that the complainant does not want her/his identity known to the respondent and witnesses,

or that the complainant wishes to withdraw the report. If at any point the complainant requests privacy, the university will make all reasonable attempts to comply with this request. In a situation where a complainant requests privacy, or removes her/himself from the investigative or campus adjudicatory process, the university's ability to investigate, respond to, or assign penalties for the allegations may be more limited.

The university is required by Title IX to weigh the complainant's request for confidentiality/privacy with the university's commitment to provide a reasonably safe and nondiscriminatory environment. There are situations in which the university may override the complainant's request for confidentiality in order to meet its Title IX obligations, including but not limited to cases which:

1. involved significant violence;
2. the university has reason to believe that the perpetrator has harmed more than one individual;
3. the university has reason to believe there are multiple perpetrators;
4. the university has received prior reports of alleged misconduct at that location;
5. there is deemed to be a threat of significant danger to the university community; or
6. involves minor status.

These instances will be limited and, to the extent possible, the university will only disclose information regarding alleged incidents to individuals who are responsible for or involved in the university's response.

If the university determines that it must disclose the complainant's identity to an alleged perpetrator, the Title IX Coordinator will inform the complainant prior to making the disclosure and will take interim measures necessary to protect the complainant and ensure the safety of others.

A complainant who initially requests confidentiality may later retract that request and ask that a full investigation be conducted.

C. CLERY ACT OBLIGATIONS

FEDERAL STATISTICAL REPORTING OBLIGATIONS

All university employees, including the confidential resources of the Abrons Student Health Center and UNCW CARE, but not professional or pastoral counselors, are required to report non-identifying statistical information about certain crimes, including any alleged sexual misconduct, dating violence, domestic violence, or stalking, as required by state and federal law, and in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. This statistical information is used for compiling the annual UNCW Campus Crime and Security Report and by UNCW Police for purposes of advising the campus community of any potential safety risks or concerns.

FEDERAL TIMELY WARNING OBLIGATIONS

Victims of gender-based/sexual misconduct should also be aware that university administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The university will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

VII. THE INVESTIGATIVE PROCESS

In accordance with state and federal laws, both the respondent and complainant are permitted to have a support person (not an active participant in the process but present for emotional support) and a university advisor, licensed attorney or non-attorney advocate accompany them through the campus conduct process (state law) and through Title IX hearings (federal law). The advisor/advocate may be a licensed attorney, non-attorney advocate or university advisor selected by the student or appointed by the university. Students are permitted these options at any point through the initial intake process, formal investigation and/or hearing process. Students who wish

to use a licensed attorney or non-attorney advocate must do so in compliance with procedures established by the Office of the Dean of Students, as described in Section II-2-I of the *Code of Student Life*.

Reports of gender-based/sexual misconduct, dating violence, domestic violence, stalking or gender-based harassment will be investigated in a thorough and timely manner as follows:

A. INITIAL INVESTIGATION ("Intake")

Upon receipt of notice of any allegation of misconduct, the Title IX Coordinator or designee will send a letter via email to the victim verifying receipt of the complaint and informing the complainant of various support services. The complainant will be invited to meet with the Title IX Coordinator so she/he can learn about their options under this policy. This meeting may also involve a discussion of any accommodations that may be appropriate concerning the complainant's academic, university housing and/or university employment arrangements (see Academic Accommodations and Interim Measures herein). If the complainant attends the meeting she/he will have an opportunity to identify their alleged assailant, if possible, and provide other initial details, and may elect to provide a written account of the incident. The Title IX Coordinator will gather initial information and determine whether the information, if true, would constitute a violation of this policy. At the conclusion of the intake process, the Title IX Coordinator will determine whether there is sufficient information to continue a formal investigation.

B. FORMAL INVESTIGATION

If the decision is made to proceed with a formal investigation, the process will begin by written notice being provided to both parties. The Title IX Coordinator will prepare and forward a formal complaint to trained Title IX investigators. The formal complaint will include the name of the respondent, the date, location and nature of the alleged misconduct, and a list of any potential witnesses that may need to be interviewed. The complainant may, but is not required to, also provide a thorough written narrative of the incident to aid in the initial investigation. This statement will be used in the conduct process.

If the complainant does not wish to participate in the formal investigation, actions will be taken as outlined in the "Confidentiality/Privacy" section herein. The university may issue an administrative order of no contact or take other reasonably necessary interim measures as described previously herein, in order to provide a safe and nondiscriminatory environment for all students. The university may also elect to proceed with a formal investigation in the absence of participation from the complainant.

C. TITLE IX INVESTIGATORS

Title IX Investigators are persons who have been designated by the Title IX Coordinator and who have undergone training on investigative methods and Title IX Policy. Investigators may include trained faculty, staff and university administrators. Upon consultation with the Office of General Counsel, the Title IX Coordinator may appoint an external investigator to investigate any case. Investigators are neutral fact-finders who typically conduct interviews and follow-up interviews with the complainant, the respondent and third-party witnesses. At the conclusion of the interviews the Investigators will submit an Investigative Report including but not limited to summaries of all interviews and any relevant evidence – including but not limited to photographs, electronic and forensic evidence – and a detailed written description of the events in question which could constitute a violation of this policy. If a hearing is conducted, the Investigators will attend the hearing to provide testimony about the results of their investigation.

A typical investigation will be completed in sixty (60) days, if not sooner. Reasonable extensions of time are permissible and both parties will be notified in writing if any extension is needed. The investigative report will be shared with the Dean of Students and the Office of General Counsel.

After reviewing the Investigative Report, the Title IX Coordinator and Dean of Students, in consultation with the Office of General Counsel, will determine if there is cause under the Code of Student Life to conduct a hearing. If a hearing is granted the formal resolution process will begin with written notice provided to the complainant and respondent, and both parties will receive a copy of the Investigative Report.

A complainant whose request for a hearing is denied may appeal that decision within five business days to the Vice Chancellor for Student Affairs, whose decision will be final.

VIII. FORMAL RESOLUTION PROCESS

If a hearing is granted the formal resolution process will begin by written notice being provided to both parties. The hearing will be conducted by the Gender-Based/Sexual Misconduct Board.

A. PRE-HEARING/INITIATION OF CHARGES

The Office of the Dean of Students will initiate conduct charges by issuing a letter to both the complainant and respondent requesting individual pre-hearing meetings with each party. A pre-hearing meeting is designed to introduce a complainant and respondent to the campus conduct process, including familiarizing him/her with student rights and responsibilities. This generally consists of meeting with a student conduct administrator in the Office of the Dean of Students. During the pre-hearing a complainant will:

1. be apprised of his/her rights and responsibilities;
2. be apprised of all relevant evidence available at that time;
3. choose whether he/she would like an advisor, licensed attorney or non-attorney advocate for consultation during the process (as previously stated, both parties may enjoy this support starting at the intake or formal investigation stages as well).

During the pre-hearing a respondent will:

1. be apprised of his/her rights and responsibilities;
2. be apprised of all relevant evidence available at that time;
3. choose whether he/she would like an advisor, licensed attorney or non-attorney advocate for consultation during the process;
4. agree or disagree with the charge(s) against him/her.

B. ADMINISTRATIVE HEARING

A respondent has the right to accept responsibility for the charge(s) and request an immediate administrative "sanctioning" hearing. An administrative hearing is a hearing conducted by a student conduct administrator in the Office of the Dean of Students. The university also reserves the right to forward the case directly to the Gender-Based/Sexual Misconduct Board.

C. GENDER-BASED SEXUAL MISCONDUCT BOARD

The Gender-Based/Sexual Misconduct Board ("GBSM Board") is a hearing board comprised of three (3) vice chancellors or their designees. Quorum is established by a full GBSM Board (3 members). The vice chancellor for student affairs will designate a chair of the GBSM Board who will participate as a voting member. All GBSM Board members will receive annual training in their responsibilities that draws on professional and expert resources.

In an emergency situation, pursuant to Section II-6-A & B or Section II-2-M of the *UNCW Code of Student Life*, the vice chancellor for student affairs or designee shall have the power to invoke summary suspension. After a hearing, the GBSM Board may ratify the vice chancellor's action, reverse it or take any other appropriate action. In such emergency situations, the vice chancellor for student affairs shall inform the chancellor of all actions taken either summarily or by the Board under the authority of this policy.

D. EXTERNAL ADJUDICATOR

Upon consultation with the Office of the General Counsel, the Title IX Coordinator may appoint an external adjudicator to hear any case. The external adjudicator will conduct a hearing following the procedures set forth in this policy and the *Code of Student Life*. Such policies and procedures may include, but are not limited to, a presentation of the Investigative Report from the investigators, testimony from parties involved, and relevant witnesses and any other relevant evidence. The external adjudicator will determine whether any section of the GBSMP has been violated and will decide upon the appropriate sanction. All due process rights, including all appropriate levels of appeal, afforded students through the traditional campus conduct process will apply for cases heard by the External Adjudicator.

E. MEDIATION

Mediation is not an appropriate route to resolution of gender-based/sexual misconduct cases and will not be used by the university to resolve gender-based/sexual misconduct complaints.

F. STANDARD OF PROOF

The standard of proof for all allegations of gender-based/sexual misconduct will be preponderance of evidence as mandated by the U.S. Department of Education's Office for Civil Rights, which means that there is greater than a 50% chance, based on all reasonable evidence, that the respondent is responsible for the alleged violation.

G. RECORDING

All conduct hearings will be audio recorded by the Office of the Dean of Students. In some cases, a transcriber may be present to transcribe the hearing.

H. RANGE OF SANCTIONS

Sanctions range from written warning up through and including suspension or expulsion from the university.

I. OUTCOME NOTIFICATION

Both the complainant and respondent will be notified in writing of the outcome of sexual misconduct cases within a reasonable period of time after the hearing concludes (typically two business days). The outcome of a campus hearing is part of the educational record of the student respondent, and is generally protected from release under a federal law, the Family Educational Rights and Privacy Act (FERPA). However, the university observes the following FERPA-permitted disclosures in accordance with Title IX and the Clery Act:

1. Complainants in non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, dating violence, domestic violence and stalking have an absolute right to be informed of the outcome and relevant sanctions of the hearing, in writing, without condition or limitation. An explanation of appeal rights will be included in such notifications.
2. The university *may* release publicly the name, nature of the violation and the sanction for any student who is found in violation of a university policy that is a "crime of violence" or non-forcible sex offense including:
   a. Arson
   b. Burglary
   c. Robbery
   d. Criminal homicide
   e. Assault offenses
   f. Sex offenses (including statutory rape and incest)
   g. Destruction/damage/vandalism of property
   h. Kidnapping/abduction

   In any of the above offenses, the university will release the information about the outcome to the complainant.

J. APPEAL PROCESS

Both the complainant and the respondent have the right to appeal the outcome of cases that involve allegations of gender-based/sexual misconduct policy. An "Intent to Appeal" must be filed within two (2) business days after notification of the original decision. The "Request for Appellate Consideration Form" must be submitted within five (5) business days after notification of the original decision. Reasonable extensions of time are permissible. Such petition shall be submitted to the Office of the Dean of Students and explain in detail the reason(s) for the student's appeal. Original sanctions (with the exception of summary suspension) are normally put into effect only after the final appellate decision has been made. The grounds for appeal in cases involving gender-based/sexual misconduct are listed below:

1. **COMPLAINANT**
   a. An alleged violation of the rights guaranteed the complainant has occurred; or
   b. The sanction did not represent the severity of the violation committed; or
   c. New evidence, not available during original adjudication, which may have bearing on the outcome.

2. **RESPONDENT**
   a. An alleged violation of the rights guaranteed the respondent has occurred; or
   b. The sanction is too severe for the violation; or
   c. New evidence, not available during original adjudication, which may have bearing on the outcome.

3. **APPEAL PROCEDURES**

   The Gender-Based/Sexual Misconduct Appeal Panel is comprised of two (2) vice chancellors or their designees who were not on the original GBSM Board.

   Upon receiving a petition, the Appeal Panel shall obtain the record of the GBSM Board/student conduct administrator. The record shall include relevant documents, the decision of the hearing including a case summary and rationale for supporting the decision. With this information, the Appeal Panel shall decide whether an Appellate Review is warranted. This decision is based on one or more of the three options for an appeal outlined above. Both the complainant and respondent will be notified in writing of the decision within five (5) business days after receipt of the petition. Reasonable extensions of time are permissible.

   If the Appeal Panel determines that an Appellate Review shall be granted, that Review shall be held within five (5) business days of such determination and notification shall be given in writing at least three (3) business days prior to the date set for the Review, specifying time and place of the Review and informing the complainant and/or respondent of his/her rights as outlined herein.

   The Appeal Panel will review all written correspondence associated with the case and any new evidence submitted that was not available during the original adjudication. The Appeal Panel may request additional documents and information from the GBSM Board chair who presided over the GBSM Board that heard the case, and may invite the complainant, the respondent, the chair, the investigators and such other persons as deemed appropriate to appear to make statements and respond to questions.

   The Appeal Panel has the authority to approve, reject or modify the decision in question or to remand the case back to the GBSM Board. For cases that do not result in suspension or expulsion, the decision of the Appeal Panel is final.

   Consistent with Section 502 D (3) of the UNC Policy Manual, where the sanction is suspension or expulsion, an appeal may be made to the Board of Trustees for an individual

student conduct case (not campus organizations), provided the appeal is based on 1) violation of due process; or 2) a material deviation from Substantive and Procedural Standards adopted by the Board of Governors.

For suspension level cases, the appeal to the Board of Trustees is final; for expulsion level cases, a final appeal may be filed with the Board of Governors.

IX. STUDENT RESPONSIBILITIES & RIGHTS

A. STUDENT RESPONSIBILITIES

1. To know and adhere to the *UNCW Code of Student Life*.
2. To be honest and complete in all information they provide in the process.
3. To attend all meetings or hearings in a timely manner.
4. To provide a list of witnesses and any documentary evidence to the Office of the Dean of Students at least three (3) business days prior to the hearing.
5. To complete any imposed sanctions on time and consistent with the decision in their case (for respondents).
6. To comply with all interim measures, including but not limited to, administrative orders of no contact, housing reassignments, and other administrative remedies assigned by the university.
7. To participate in a manner that is civil and respectful.
8. To submit an explanatory or explicative challenge to the selection of designated investigators or adjudicators if a perceived conflict of interest exists. The Dean of Students or designee will approve or deny any challenges.

B. COMPLAINANT RIGHTS

1. To an investigation and appropriate resolution of all credible complaints of gender-based/sexual misconduct made in good faith to responsible employees.
2. If a determination is made that a hearing will occur:
    a. To a pre-hearing meeting with a student conduct administrator where rights, responsibilities and procedures are explained.
    b. To review all available information, documents, and a list of witnesses that may testify against him/her.
    c. To appear in person, hear all testimony and present any relevant information on their behalf, call witnesses and ask questions of any witnesses at the hearing.
    d. During an administrative, GBSM Board hearing or external adjudicator hearing, both the complainant and the respondent will be permitted to question the testimony of the other. All questions will be posed to the administrator or chair of the board and if the question is relevant and proper the chair will repeat, on behalf of the questioner, the question to be answered.
    e. To elect not to appear at the hearing. A complainant who elects not to appear at a hearing may not be represented by a university advisor, licensed attorney or non-attorney advocate at the hearing.
    f. To elect to participate remotely (via video or audio conference).
    g. To a closed hearing. A closed hearing is closed to the general public.
    h. To a university advisor, licensed attorney or non-attorney advocate (see Section II-2-H and I of the *Code of Student Life*).
    i. To an advocate or advisor as well as a support person during the hearing. The support person(s) may not participate in the hearing. Professional victim advocates are available to complainants through UNCW CARE and the Rape Crisis Center.
    j. To remain present during the entire proceeding, excluding deliberation.
    k. To not have prior sexual history with anyone other than the respondent admitted as evidence.

l. To refuse to answer any questions or make a statement; however, the hearing body shall make its decision solely on the basis of information introduced at the hearing.
m. To make a "victim impact statement" if the respondent is found in violation of the *Code of Student Life*.
n. To have all statements, information or comments given during the hearing held in the strictest of confidence by the hearing body before, during and after deliberation.
o. To have the hearing conducted as outlined in the *UNCW Code of Student Life*.
p. To be informed in writing of the outcome and any sanction(s) of the conduct hearing (usually within two business days) of the end of the hearing.
q. To have one level of institutional appeal as outlined in the UNC Policy Manual 700.4.1.

C. RESPONDENT RIGHTS

1. To an investigation and appropriate resolution of all credible complaints of gender-based/sexual misconduct made in good faith to responsible employees.
2. If a determination is made that a hearing will occur:
    a. To a pre-hearing meeting with a student conduct administrator where rights, responsibilities and procedures are explained.
    b. To written notice of the charge(s). In the event that additional charges are brought, additional written notice must be forwarded to the respondent. Notices are sent via e-mail pursuant to Section II-2-A of the *Code of Student Life*.
    c. To review all available information, documents, and a list of witnesses prior to the hearing that may testify against him/her. This is a continuing obligation of the complaining party and the dean of students/designee.
    d. To accept responsibility and request an immediate administrative "sanctioning" hearing (although the university reserves the right to forward the case to GBSM Board).
    e. To appear in person, hear all testimony and present any relevant information on their behalf, call witnesses and ask questions of any witnesses at the hearing.
    f. During the hearing, both the complainant and the respondent will be permitted to question the testimony of the other. All questions will be posed to the administrator or chair of the board and the chair will repeat, on behalf of the questioner, the question to be answered, unless, upon consultation with the General Counsel, a question is deemed irrelevant or in violation of this GBSM Policy, federal or state law, and/or Department of Education Office of Civil Rights guidance."
    g. To elect not to appear at the hearing, in which case the hearing shall be conducted in absentia (in the respondent's absence). A respondent who elects not to appear at a hearing may not be represented by a university advisor, licensed attorney or non-attorney advocate at the hearing.
    h. To know the identity of witnesses testifying against them.
    i. To a closed hearing. A closed hearing is closed to the general public.
    j. To a university advisor, licensed attorney or non-attorney advocate (see Section II-2-H and I).
    k. To an advocate or advisor as well as a support person during the hearing. The support person(s) may not participate in the hearing.
    l. To refuse to answer any questions or make a statement; however, the hearing body shall make its decision solely on the basis of information introduced at the hearing.
    m. To have all statements, information or comments given during the hearing held in the strictest of confidence by the hearing body before, during and after deliberation.
    n. To have the hearing conducted as outlined in the *UNCW Code of Student Life*.

o. To have one level of institutional appeal as outlined in the UNC Policy Manual 700.4.1.
p. To be informed in writing of the outcome and any sanction(s) of the conduct hearing, usually within two business days of the end of the hearing.

X. SPECIAL PROVISIONS

A. ATTEMPTED VIOLATIONS

The university may investigate and take appropriate action regarding attempts to commit any of the violations listed in this policy as if those attempts had been completed.

B. UNIVERSITY AS COMPLAINANT

The university's role is to investigate complaints and, when appropriate, to provide a process to find fact and assign appropriate remedies. As such, the university typically assumes the role of "presenter" during campus conduct proceedings. However, as necessary, the university reserves the right to initiate a complaint, to serve as the complainant, and to initiate conduct proceedings without a formal complaint by the victim of misconduct.

C. FALSE REPORTS

The university will take appropriate action toward intentional false reporting of incidents. It is a violation of the *Code of Student Life* to make an intentionally false report or any policy violation, and it may also violate state criminal statutes and civil defamation laws.

D. ALTERNATIVE TESTIMONY OPTIONS

For gender-based/sexual misconduct complaints, whether the victim is serving as the complainant or as a witness, alternative testimony options will be given, including but not limited to placing a privacy screen between the victim and the respondent in the hearing room, telephone conference call or allowing the victim to testify from another room via closed circuit. While these options are intended to help make the victim more comfortable, they are not intended to work to the disadvantage of the respondent.

E. PAST SEXUAL HISTORY/CHARACTER

In accordance with guidance from the Department of Justice, questioning about the victim's sexual history with anyone other than the alleged perpetrator will not be permitted. The mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual misconduct. Testimony about prior sexual relationship between the parties will be permitted only as it is **relevant to the issue of consent.**

While previous conduct violations by the respondent are not generally admissible prior to discussion of sanction recommendations, the Dean of Students/designee may supply previous complaint information to the hearing body when presenting a final statement prior to deliberation, or may consider it him/herself if s/he is hearing the complaint, if:

1. The respondent was previously found to be responsible;
2. A previous incident/complaint was substantially similar to the present allegation and/or;
3. Information indicates a pattern of behavior and substantial conformity with that pattern by the respondent.

G. IMPACT ON STUDENT ENROLLMENT

If a case is assigned for a formal investigation, the university reserves the right to place an encumbrance on the respondent's registration and transcript, including awarding of grades for the current semester, until such time that the investigation and any associated charges are resolved.

XI. RESOURCES

UNIVERSITY RESOURCES

UNCW CARE	910-962-2273 / after hours at 910-512-4821

UNCW Police	911 or 910-962-2222
UNCW Counseling Center	910-962-3746
Student Health Center	910-962-3280
Office of the Dean of Students	910-962-3119
Housing and Residence Life	910-962-3241
Title IX Coordinator	910 -962-3876

LOCAL RESOURCES

Rape Crisis Center	910-392-7460 or (800) 672-2903
Domestic Violence Shelter & Services	910-343-0703
New Hanover Regional Medical Center	910-343-7799
Cape Fear Memorial Hospital	910-452-8100
Wilmington City Police	911 or 910-343-3600
New Hanover County Sheriff's Office	910-341-4200

FEDERAL RESOURCES

U.S. Department of Education, Office of Civil Rights
http://www2.ed.gov/about/offices/list/ocr/index.html
Department of Justice, Office on Violence Against Women
http://www.changingourcampus.org/