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## 04.130 Student Gender-Based Sexual Misconduct Policy

The university takes all forms of gender-based/sexual misconduct very seriously. 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 and are detailed in the following pages. Acts of gender-based/sexual misconduct carried out by and/or against university community members will not be tolerated and are punishable under university policies and North Carolina law.

### Authority:

Chancellor

### History:

Revised, November 8, 2022; revised August 14, 2020; July 22, 2019; revised August 16, 2018; August 14, 2017; revised August 11, 2016; revised January 1, 2016; revised January 2015; revised August 18, 2014; revised July 31, 2012; reformatted July 2005

### Source of Authority:

20 U.S.C. § 1092(f) (also known as The Clery Act)

### Related Links:

- [Policy 02.205 Unlawful Discrimination, Harassment, and Sexual Misconduct](#)
- [02.210 Title IX Grievance Policy](#)
- [University Police](#)

### Responsible Office:

Dean of Students

## Policy Details:

### 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 certain 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 believe you have been the victim of abuse or assault, please also refer to <https://uncw.edu/care/survivors/index.html> 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 Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* ("Title IX"), which prohibits discrimination on the basis of sex in educational programs or activities. Title IX-related incidents are covered in a separate grievance policy at [02.210 Title IX Grievance Policy](#). This policy covers other sexual misconduct not regulated by Title IX due to location or nature of the incident. Sexual misconduct, as defined in this policy, is a form of sex discrimination and, as explained in Section V of this policy, sexual misconduct can include 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. It also addresses behavior by a respondent enrolled as a student at UNCW where the complainant is a faculty or staff member. Complaints relating to sexual misconduct by a member of the university faculty or staff as respondent should be reported to the university's Director of Title IX and Clery Compliance, University Police or the Office of Human Resources. Complaints relating to sexual misconduct involving a student and non-university member can be reported to the law enforcement agency of the jurisdiction in which the misconduct took place, but also should be reported to the Office of Title IX and Clery Compliance. Details regarding UNCW's policy for employee harassment may be found at <http://www.uncw.edu/policies/conduct.html>.

<sup>1</sup>This Policy amendment is effective August 14, 2020. On May 6, 2020, the United States Department of Education released new Title IX regulations, effective August 14, 2020 (the "2020 Title IX Regulations"). The new 2020 Title IX Regulations require modification of this policy. However, there are several lawsuits pending which seek to stay, delay or block implementation of some or all of the provisions in the 2020 Title IX Regulations. Should a court delay, stay or strike down, either temporarily or permanently, any portion of the 2020 Title IX Regulations, UNCW will make any necessary modifications to this policy, which will become effective immediately. If a court delays implementation of or strikes down all of the regulations, the University may revert back or retain the previous version of this policy.

### 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 and are detailed herein.

This policy applies regardless of the complainant'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 Director of Title IX and Clery Compliance, 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/titleix>.

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 Director of Title IX and Clery Compliance within one (1) business day of receiving the notice, unless that notice was communicated to an official who can provide professional confidentiality (see "Confidential Resources" below). Clery Act crime statistic and timely warning reporting duties must also be observed (as explained in Section VI.B. 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 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 other university controlled property; or
2. that were part of official university programs (regardless of location); or
3. when the complainant and respondent are UNCW students; or
4. when the alleged behavior by a UNCW student respondent is a threat of significant danger to the campus community (including off campus).

Accordingly, the university may respond to cases where the incident occurred off campus or abroad during university Study Abroad programming if one of the other criterion are met.

#### B. LIMITATION PERIOD

Complainants 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:

- A. UNCW Campus Advocacy, Resources and Education (CARE)
- B. UNCW Counseling Center
- C. 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," "Speak Out," 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 Director of Title IX and Clery Compliance.

### 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 wellbeing 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 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 a support person 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](http://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 72 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-up 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.

Victims should also maintain any other evidence they may have. This can include, but is not limited to, stalking logs, photographs (personal, health care related, or law enforcement related), text messages, social media postings or messages, voicemails, emails, and other written correspondence.

If a victim wants to pursue criminal charges, they should contact University Police at 910-962-2222, or emergency 911. University Police can assist victims in identifying and contacting the appropriate law enforcement agency. Advocates from 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 complainant 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.

Reasonable academic accommodations and interim measures for both complainants and respondents may 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 individuals 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 individuals 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 person at risk.

There are also provisions in North Carolina General Statutes that provide amnesty for individuals seeking medical assistance for others experiencing drug- or alcohol-related overdoses. This includes General Statute § 18B-302.2 ([https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_18B/GS\\_18B-302.2.pdf](https://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_18B/GS_18B-302.2.pdf)), which relates to alcohol, and General Statute § 90-96.2 ([https://ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_90/GS\\_90-96.2.pdf](https://ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_90/GS_90-96.2.pdf)), which relates to drugs.

#### IV. DIRECTOR OF TITLE IX AND CLERY COMPLIANCE

The Director of Title IX and Clery Compliance 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 Director 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 ensures that the University's response is effective, timely, thorough, and follows all legal mandates. The Director of Title IX and Clery Compliance'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 Director may choose an appropriately trained designee(s) as needed.

Terrell N. Nicholson, J.D.  
Campus Box 5699  
Hoggard Hall 244  
(910) 962-3557  
[nicholsont@uncw.edu](mailto:nicholsont@uncw.edu)

The Deputy Title IX Coordinator is:

Leigh Fickling, J.D., M.Ed. M.S.  
Campus Box 5699  
DePaolo Hall 1003  
(910) 962-3557  
[ficklingl@uncw.edu](mailto:ficklingl@uncw.edu)

## V. DEFINITION OF VIOLATIONS AND RELATED TERMS

### A. SEXUAL MISCONDUCT

State law defines various violent and/or non-consensual sexual acts as crimes. Title IX defines a limited number of types of sexual misconduct for purposes of the Title IX regulations. In addition to both of those sources, 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, including, but not limited to educational sanctions, a written warning, disciplinary probation, removal from housing, housing reassignment, suspension, expulsion, or a combination thereof 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.

### 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 has a mental or physical disability which inhibits or precludes the individual's 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.

#### **OFFENSES INCLUDE:**

The 2020 Title IX Regulations enact prescriptive standards for jurisdiction, and in particular, only cover offenses that happen during an "education program or activity," which includes locations, events, or circumstances over which the university exercises substantial control that are within the United States. However, the Code of Student Life covers off-campus conduct when it implicates and impacts UNCW students. Therefore, this policy covers off-campus sexual misconduct, including those offenses that may otherwise meet Title IX definitions but for geographic restrictions. Those offenses include:

##### **1. NON-CONSENSUAL SEXUAL INTERCOURSE**

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**

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. 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 existence of such relationship shall be determined based on the complainant's statement and with consideration of the following factors:

- a. the length of the relationship;
- b. the type of relationship; and/or
- c. the frequency of interaction between the persons involved in the relationship.

##### **4. DOMESTIC VIOLENCE**

Domestic violence is defined as abuse or violence committed by:

- a. a current or former spouse of the victim;
- b. a person with whom the victim shares a child in common;
- c. a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- d. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the abuse or violence occurred; and/or
- e. a person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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/PDF/BySection/Chapter\\_50B/GS\\_50B-1.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_50B/GS_50B-1.pdf)) which is applicable to protective orders for domestic violence in North Carolina, but may differ from the definition used by the university to address policy violations.

##### **5. 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 their 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:

- a. non-consensual communication including in-person communication, telephone calls, voice messages, text messages, e-mail 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;
- b. following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a victim; or
- c. 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](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.

## **B. OTHER FORMS OF SEXUAL MISCONDUCT**

### **1. SEXUAL EXPLOITATION**

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;
- e. administering alcohol or drugs (such as "date rape" drugs) to another person without that individual's knowledge or consent.

### **2. SEXUAL HARASSMENT**

Sexual harassment is a form of sexual misconduct. Sexual harassment is defined as any unwelcome conduct of a sexual nature, including but is not limited to the following, when it meets the standards set forth below:

- A. unwelcome sexual advances;
- B. requests for sexual favors; and/or
- C. 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. All individuals 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 falls under an existing exception to the First Amendment, such as true threats and intimidation
- j. whether the speech or conduct deserves the protections of academic freedom

## 2. **Quid Pro Quo**

Quid pro quo sexual harassment exists when:

- a. there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
- b. submission to or rejection of such conduct results in adverse educational or employment action.

## 3. **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:

- a. intimidation;
- b. threats;
- c. harassment; and/or
- d. 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 an individual or their agents, of reprisal, interference, restraint, discrimination, coercion or harassment against any person participating in these procedures shall be subject to prompt and thorough investigation and, if substantiated, subject to disciplinary action under this policy and the Code of Student Life or employment policy.

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

## 4. **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:

- a. threatening to commit a harmful or sexual act upon another person;
- b. stalking; or
- c. cyber-stalking.

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

Other offenses include, but are not limited to:

- a. 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.
- b. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of actual or perceived membership in a protected class. Discrimination can also involve treating an individual less favorably because of the individual's connection with an organization or group that is generally associated with people of a certain protected class.
- c. 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.
- d. 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 (Section II-1-B.7 of the *UNCW Code of Student Life*).
- e. 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.
- f. 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 gender-based/sexual misconduct 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 complainants to report alleged gender-based/sexual misconduct promptly to university officials and to local law enforcement.

University 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 Director of Title IX and Clery Compliance, an advocate in the CARE Office, University Police, and/or the Office of the Dean of Students. Reports may also be made online at <https://uncw.edu/titleix>.

Any responsible employee university office or employee receiving notice of gender-based/sexual misconduct is required to file a report with the Director of Title IX and Clery Compliance 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 Director of Title IX and Clery Compliance, University Police, Human Resources or the Office of the Dean of Students in accordance with the university's Unlawful Discrimination, Harassment, and Sexual Misconduct 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 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. CLERY ACT REQUIREMENTS**

### **FEDERAL STATISTICAL REPORTING REQUIREMENTS**

All university employees, including the confidential resources of the Abrons Student Health Center and 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 Annual Security Report and by the Office of Title IX and Clery Compliance and University Police for purposes of advising the campus community of any potential safety risks or concerns.

### **FEDERAL TIMELY WARNING REQUIREMENTS**

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. 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 their 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 removal 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.

## **III. UNIVERSITY REQUIREMENTS**

The university weighs 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 respondent, the Director of Title IX and Clery Compliance 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.

## **IX. 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). 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-2-1 of the *Code of Student Life*.

Reports of gender-based/sexual misconduct 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 Director of Title IX and Clery Compliance or designee will send a letter via e-mail to the complainant verifying receipt of the complaint and informing the complainant of various support services. The complainant will be invited to meet with the Director of Title IX and Clery Compliance so the complainant 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, the complainant will have an opportunity to identify the respondent, if possible, and provide other initial details, and may elect to provide a written account of the incident. The Director of Title IX and Clery Compliance 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 Director of Title IX and Clery Compliance 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 Director of Title IX and Clery Compliance 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 Director of Title IX and Clery Compliance and who have undergone training on investigative methods and UNCW policy. Investigators may include trained faculty, staff and university administrators. Upon consultation with the Office of General Counsel, the Director of Title IX and Clery Compliance may appoint external investigators 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 to the Director of Title IX and Clery Compliance including but not limited to summaries of the case 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 Director of Title IX and Clery Compliance 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 cause to conduct a hearing exists, the Director of Title IX and Clery Compliance will then meet with the complainant to determine whether or not they wish to proceed with a hearing. Generally, the complainant's request will be respected, unless a situation exists that would require the university to override a request not to have a hearing consistent with section VIII of this policy.

If a hearing is granted the formal resolution process will begin with written notice provided to the complainant and respondent, and both parties will then receive a copy of the Investigative Report. The parties are expressly prohibited from further sharing or re-disclosing the report, except to a designated university advisor, licensed attorney, non-attorney advocate, and/or support person.

If no hearing occurs, both parties will be informed in writing. A complainant whose request for a hearing is denied may appeal that decision in writing within five (5) business days to the Vice Chancellor for Student Affairs, whose decision will be final.

## X. 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 an external adjudicator.

### 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 the parties 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 rights and responsibilities;
2. be apprised of all relevant evidence available at that time;
3. choose whether or not to have 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 rights and responsibilities;
2. be apprised of all relevant evidence available at that time;
3. choose whether or not to have an advisor, licensed attorney or non-attorney advocate for consultation during the process;
4. agree or disagree with the charge(s).

### 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. Administrative hearings are closed hearings, which are closed to the general public. The university also reserves the right to forward the case directly to the external adjudicator.

### C. EXTERNAL ADJUDICATOR

The Director of Title IX and Clery Compliance shall appoint an external adjudicator to hear the case. The external adjudicator used in the process will receive annual training in their responsibilities that draws on professional and expert resources. The external adjudicator will conduct a hearing following the procedures set forth in this policy and the *Code of Student Life*. The procedure may include, but is 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. Hearings conducted by the external adjudicator are closed hearings, which are closed to the general public.

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. Summary suspension is an action requiring that a student immediately leave the campus and university property. It may be imposed when there is reasonable cause to believe, based on available facts, that the student may be an immediate threat to the safety of themselves, other members of the university community, or university property or is disruptive without relief to the university community.

Any student who is suspended on a summary basis and returns to the campus and university property during suspension shall be subject to further disciplinary action and may be arrested for criminal trespass. In addition, violation of any relevant no contact order or other interim measures during the period of summary suspension will also result in further disciplinary action. Permission to be on campus for a specific purpose (e.g., to take an exam, to consult with the Office of Title IX and Clery Compliance or the Office of the Dean of Students, or to participate in campus disciplinary procedures) may be granted by the Office of the Dean of Students or designee and requires 24-hour advance notice.

When a student is suspended on a summary basis, the student is given notice containing the reasons for suspension, the duration and any conditions that apply and the link to the website for the *UNCW Code of Student Life*, which also contains the Student Gender-Based/Sexual Misconduct Policy. A student notified of such summary suspension may, within ten (10) business days of the written notice of suspension, request through the Office of the Dean of Students or designee a hearing before an external adjudicator. The hearing shall normally be conducted within ten (10) business days of the student's request for a hearing. Reasonable extensions of time may be allowed.

The external adjudicator may ratify the vice chancellor's action and continue the conditions of the summary suspension, reverse it or take any other appropriate action, including assigning sanctions. In such emergency situations, the vice chancellor for student affairs shall inform the chancellor of all actions taken either summarily or by the external adjudicator under the authority of this policy.

#### **D. STANDARD OF PROOF**

Consistent with other conduct cases, the standard of proof for all allegations of gender-based/sexual misconduct will be preponderance of evidence, which means that there is greater than a 50% likelihood, based on all reasonable evidence, that the respondent is responsible for the alleged violation.

#### **E. RECORDING**

All conduct hearings will be transcribed by a transcriber present at the hearing. In the event that such a transcriber is not available, the hearing will be audio recorded.

#### **F. RANGE OF SANCTIONS**

Sanctions include, but are not limited to written warning, educational sanctions, disciplinary probation, removal from housing, housing reassignment, suspension, or expulsion from the university.

#### **G. OUTCOME NOTIFICATION**

Both the complainant and respondent will be notified simultaneously 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, complainants in non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, dating violence, domestic violence, stalking, statutory rape and incest cases 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.

#### **H. APPEAL PROCESS**

Both the complainant and the respondent have the right to appeal the outcome of GBSMP cases. 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 upon request prior to the deadline for submission. 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, has been discovered 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, has been discovered which may have bearing on the outcome.

### 3. **APPEAL PROCEDURES**

The Gender-Based/Sexual Misconduct Appeal Panel is comprised of three (3) vice chancellors or their designees.

Upon receiving a petition, the Appeal Panel shall obtain the full record of the external adjudicator/student conduct administrator. The record shall include the investigative report, the hearing transcript, the decision of the hearing including a case summary and rationale for supporting the decision, and other relevant documents. With this information, the Appeal Panel will conduct an Appellate Review based on one or more of the three options for an appeal outlined above. Both the complainant and respondent typically will be notified in writing of the decision within fifteen (15) business days after receipt of the petition. Reasonable extensions of time are permissible.

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 external adjudicator that heard the case, and may invite the complainant, the respondent, the external adjudicator, the investigators and such other persons as deemed appropriate to appear to make statements and respond to questions. If the Appeal Panel needs to meet with any of the aforementioned individuals, notification shall be given in writing at least two (2) business days prior to the date set for the meeting, specifying time and place of the meeting and informing the complainant and/or respondent of their rights as outlined herein.

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

Consistent with Section 502D(3) of the UNC Policy Manual, where the sanction is suspension or expulsion, an appeal may be made to the Board of Trustees within three (3) business days of notification that the original appeal has been denied. This appeal is 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.

The Board of Trustees will review the appeal within ten (10) business days. Reasonable extensions of time will be permitted. For suspension or expulsion level cases, the appeal to the Board of Trustees is final.

## **XI. STUDENT RESPONSIBILITIES & RIGHTS**

### **A. STUDENT RESPONSIBILITIES**

These responsibilities and rights are applicable to complainants, respondents, and witnesses, as indicated below.

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 comply with all reasonable requests for 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 five (5) business days prior to the hearing. Documentary evidence should be organized chronologically and each page shall be numbered. When possible, all such evidence should be submitted electronically. It is the complainant's and respondent's responsibility to notify their witnesses of the day, time and location of the hearing.
5. To request dispensation from the relevant court to enable a hearing to occur in cases where the parties are subject to a Domestic Violence Protective Order (DVPO);
6. To complete any imposed sanctions on time and consistent with the decision in their case (*for respondents*).
7. 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.
8. To participate in a manner that is civil and respectful.
9. To submit a challenge to the selection of designated investigators or adjudicators if a perceived conflict of interest exists. The Director of Title IX and Clery Compliance 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 the complainant in the Office of the Dean of Students. Where appropriate, copies of available information and documents will be provided. Released documents/evidence will not include items such as medical information or other sensitive information or documentation.
  - 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 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 external adjudicator and the external adjudicator will repeat, on behalf of the questioner, the question to be answered, unless a question is deemed irrelevant, unduly repetitive, or in violation of this GBSM Policy, federal or state law, and/or Department of Education Office for Civil Rights guidance.
  - 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 as outlined in Alternative Testimony Options in Section XII.D.
  - g. To a university advisor, licensed attorney or non-attorney advocate (see Section II-2- H and I of the *Code of Student Life*).
  - h. 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.
  - i. To remain present during the entire proceeding, excluding deliberation.
  - j. To not have prior sexual history with anyone other than the respondent admitted as evidence.
  - k. 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.
  - l. To make a "victim impact statement" if the respondent is found in violation of the *Code of Student Life*.
  - 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 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.
- p. 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.
  - c. To review all available information, documents, and a list of witnesses that may testify against the respondent in the Office of the Dean of Students. Where appropriate, copies of available information and documents will be provided. Released documents/evidence will not include items such as medical information or other sensitive information or documentation.
  - d. To accept responsibility and request an immediate administrative "sanctioning" hearing (although the university reserves the right to forward the case to external adjudicator).
  - 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 external adjudicator and the external adjudicator will repeat, on behalf of the questioner, the question to be answered, unless a question is deemed irrelevant, unduly repetitive, or in violation of this GBSM Policy, federal or state law, and/or Department of Education Office for 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 elect to participate remotely as outlined in Alternative Testimony Options in Section XII.D.
  - i. To know the identity of witnesses testifying against them.
  - 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 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.
  - p. To have one level of institutional appeal as outlined in the UNC Policy Manual 700.4.1.

## XII. SPECIAL PROVISIONS

### A. PRESUMPTION OF NON-RESPONSIBILITY

The investigation is a neutral, fact-gathering process. The respondent is presumed to be not responsible; this presumption may be overcome only where the external adjudicator determines that, by a preponderance of evidence, there is sufficient information to support a finding that the respondent violated this policy.

#### B. 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.

#### C. 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.

#### D. 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.

#### E. ALTERNATIVE TESTIMONY OPTIONS

For gender-based/sexual misconduct complaints, alternative testimony options will be given, including but not limited to placing a privacy screen between the complainant and the respondent in the hearing room, telephone conference call or allowing a party to testify from another room via closed circuit. These alternative testimony options will remain in place throughout the process. Neither complainant's nor respondent's university advisor, licensed attorney, non-attorney advocate, or support person will be permitted to have a line of vision to the opposing party. While these options are intended to help make the parties more comfortable, they are not intended to work to the disadvantage of the opposing party.

#### F. PAST SEXUAL HISTORY/CHARACTER

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 if the Dean of Students/designee 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 an investigation pursuant to this policy is pending, respondents will not be permitted to formally withdraw from the university until such time that the investigation and any associated charges are resolved. If the respondent is found responsible for any associated charges and is suspended or expelled, a transcript notation will result. Expulsion will result in a permanent transcript notation. A sanction of suspension or expulsion further requires that the student's name be added to the UNC Suspension/Expulsion database.

### III. RESOURCES UNIVERSITY RESOURCES

<b>Resource</b>	<b>Contact</b>
<b>CARE</b>	910-962-2273 / after hours at 910-512-4821
<b>University Police</b>	911 or 910-962-2222
<b>Counseling Center</b>	910-962-3746
<b>Student Health Center</b>	910-962-3280
<b>Office of the Dean of Students</b>	910-962-3119
<b>Housing and Residence Life</b>	910-962-3241
<b>Office of Title IX and Clery Compliance</b>	910 -962-3557

### **LOCAL RESOURCES**

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

### **FEDERAL RESOURCES**

U.S. Department of Education, Office for Civil Rights <http://www2.ed.gov/about/offices/list/ocr/index.html>  
 U.S. Department of Justice Office on Violence Against Women <https://www.justice.gov/ovw>