

POL 04.25.05  
Student Sexual Misconduct Policy

**Authority:** Chancellor

**History:**

- First Issued: Prior to 2015
- Revised: December 1, 2015; June 1, 2016; August 26, 2016
- Last Revised: October 30, 2018

**Related Policies:**

- [UNC Policy Manual, The Code – Section 502 D.\(3\): Relation of the Chancellor to the Constituent Institution \(pg. 21\)](#)
- [UNCP POL 04.10.01 - Campus Crime Reporting Policy](#)
- [UNCP Policy - Prohibiting Illegal Harassment and Discrimination Policy](#)
- [UNC Policy Manual 700.4.1.1\[R\] - Right to an Attorney or Non-Attorney Advocate for Student and Student Organizations](#)
- [Family Educational Rights and Privacy Act \(FERPA\)](#)
- [US Department of Education - Office for Civil Rights: Dear Colleague Letter](#)

**Additional References:**

- [University of North Carolina - Campus Security Initiative](#)
- [UNC Pembroke Student Handbook](#)
- [20 U.S. Code § 1681 - Sex](#)
- [U.S. Department of Education - Office for Civil Rights: Title IX and Sex Discrimination](#)
- [20 U.S. Code § 1092\(f\) - Disclosure of campus security policy and campus crime statistics](#)
- [Office for Civil Rights' Dear Colleague Letter, April 2015](#)
- [Office for Civil Rights' Title IX Resource Guide, April 2015](#)
- [Office for Civil Rights' Q and A on Title IX and Sexual Violence, April 2014](#)
- [Office for Civil Rights' Know Your Rights, April 2014](#)
- [Office for Civil Rights' Dear Colleague Letter, April 2011](#)
- [Office for Civil Rights' Know Your Rights](#)
- [Office for Civil Rights' Dear Colleague Letter, October 2010 \(Bullying\)](#)
- [Know Your IX](#)
- [Summary of the Jeanne Clery Act](#)
- [Campus Clarity](#)
- [North Carolina Coalition Against Sexual Assaults - NC Rape Crisis Centers](#)
- [Rape Crisis Center of Robeson County](#)
- [Domestic Violence and Rape Crisis Center of Scotland County](#)
- [Rape Crisis Volunteers of Cumberland County](#)
- [Friend to Friend of Moore County](#)
- [Sexual Misconduct Investigation Flowchart](#)

## **1. INTRODUCTION**

1.1 Non-Discrimination Statement: The University prohibits discrimination based on a person's status as a veteran or an individual with a disability, and prohibits discrimination against all individuals based on their age, race, color, religion, sex, sexual orientation, gender identity, genetic information, or national origin.

1.2 The University of North Carolina at Pembroke has zero-tolerance for sexual misconduct in all of its forms, including but not limited to: sex/gender-based discrimination and harassment and sexual violence committed against students, employees, visitors to the campus, and other persons who use university facilities or participate in university programs or activities. The University of North Carolina at Pembroke is committed to the prevention of sex/gender-based discrimination and harassment, sexual misconduct, sexual assault, domestic violence, dating violence, and stalking.

## **2. SCOPE**

### **2.1 Title IX and Clery Act (Sexual Harassment and Misconduct Offenses)**

2.1.1 Title IX of the Education Amendments of 1972, as amended, prohibits discrimination on the basis of sex in any federally funded education program or activity. Sex/gender-based discrimination and sexual violence are forms of sexual harassment prohibited under state and federal laws including Title IX. Sexual harassment may be verbal, non-verbal or physical in nature, such as persistent unwanted sexual advances or request for sexual favors. Sexual harassment also includes acts of sexual violence. The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) also prohibits sexual violence on university and college campuses.

**2.2 Mission Statement:** The University of North Carolina at Pembroke is committed to providing an inclusive and welcoming environment for all students, faculty, staff, and visitors. All members of the university community are expected to engage in conduct that contributes to its culture of integrity and honor. The university prohibits its faculty, staff, and students from engaging in any form of discrimination, protected-status harassment, sexual harassment, sexual violence, and retaliation and expects these individuals to refrain from committing acts of discrimination, bias, or sexual violence as these policy violations jeopardize the health and welfare of our campus community. In compliance with applicable federal and state legislation and university policy, the university maintains processes to provide redress and remediation to individuals or groups who believe they have been the victim of these offenses.

2.3 The purpose of this policy is to provide students with information for filing a complaint of sexual misconduct when they feel they have been the victim of another student. If a student feels he/she has been the victim of sexual misconduct by university faculty or staff or any visitor to the university, the student should notify the Title IX coordinator or a deputy Title IX coordinator immediately.

2.4 The director of Title IX and Clery Compliance has been designated the university's Title IX coordinator and is responsible for an unbiased oversight of the university's response to complaints of sexual misconduct and for identifying and addressing any patterns or systemic problems revealed by such complaints. The Title IX coordinator is to organize training for students, faculty and staff on sexual misconduct violations (e.g., gender based/sexual misconduct, sexual harassment, sexual assault, domestic violence, dating violence, and stalking), investigate alleged sexual misconduct complaints, ensure appropriate interim measures and accommodations for both Reporting Party and Responding Party, and ensure that the appropriate grievance process is initiated in response to the complaint.

2.4.1 The Title IX coordinator has annual training on investigative methods and sexual misconduct policies. The Title IX coordinator is a neutral fact-finder who will conduct interviews with the Reporting Party, the Responding Party, and any third-party witnesses and gather any additional relevant information. The Title IX coordinator is not an advocate for any party involved in a Title IX investigation and will treat all parties equally while conducting an open-minded, factually-based investigation. All references to the Title IX coordinator include "or his/her designee."

2.4.2 The Title IX coordinator oversees the prompt investigation of complaints alleging sex/gender-based discrimination and/or harassment; establishes findings as to whether sex/gender-based discrimination and/or harassment occurred; assigns remedies (including interim measures) necessary to address the sex/gender-based discrimination and/or harassment, eliminate any hostile environment, and prevent its reoccurrence; and serves as consultant to any disciplinary hearing panel where sexual harassment has been determined to have occurred to ensure the University's compliance with Title IX.

2.4.3 The Title IX coordinator meets and communicates regularly with the designated deputy Title IX coordinators in Student Affairs, Human Resources, Academic Affairs, and Athletics to ensure the prompt, fair, and impartial resolution of complaints. The Title IX coordinator retains oversight of any delegated responsibilities and ensures there are no conflicts of interest with regard to the deputy coordinators' primary job duties.

2.4.3.1 The associate vice chancellor for Student Affairs has been designated by the chancellor as the deputy Title IX coordinator for complaints involving sex/gender-based discrimination and/or harassment. The associate vice chancellor for Student Affairs will assist the Title IX coordinator with investigating sexual misconduct allegations, provide appropriate accommodations to both the Reporting Party and Responding Party(ies), ensure the appropriate disciplinary process meets Title IX requirements for all parties, and provide educational outreach.

2.4.3.2 The HR Consultant for Employee Relations and Performance Management has been designated by the chancellor as the deputy Title IX coordinator for complaints involving sex/gender-based discrimination and/or harassment. The HR Consultant – Employee Relations and Performance Management will assist the Title IX coordinator with investigating sexual misconduct allegations, provide appropriate accommodations to the Reporting Party and

Responding Party(ies), ensure the employee grievance process meets Title IX requirements for all parties, and provide educational outreach.

2.4.3.3 The associate vice chancellor for Academic Affairs has been designated by the chancellor as the deputy Title IX coordinator for complaints involving sex/gender-based discrimination and/or harassment. The associate vice chancellor for Academic Affairs will assist the Title IX coordinator with investigating sexual misconduct allegations, provide appropriate accommodations to the Reporting Party and Responding Party(ies), ensure the faculty grievance process meets Title IX requirements for all parties, and provide educational outreach.

2.4.3.4 The associate athletic director for Compliance and Business Operations has been designated by the chancellor as the deputy Title IX coordinator for complaints involving sex/gender-based discrimination and/or harassment. The associate athletic director for Compliance and Business Operations will assist the Title IX coordinator with investigating sexual misconduct allegations, provide appropriate accommodations to both Reporting Party and Responding Party(ies), ensure the appropriate disciplinary process meets Title IX requirements for all parties, and provide educational outreach.

2.4.4 Anyone with questions regarding a possible incident of sexual misconduct and/or wishing to make a complaint relating to sexual harassment (to include sexual assault) or sex/gender-based discrimination may do so by reporting the concern to the Title IX coordinator or a deputy Title IX coordinator: [Sexual Misconduct Reporting Form](http://www.uncp.edu/about-uncp/administration/departments/title-ix-and-clery-compliance/title-ix-sexual-misconduct-reporting-form) is found here: <http://www.uncp.edu/about-uncp/administration/departments/title-ix-and-clery-compliance/title-ix-sexual-misconduct-reporting-form>

2.4.5 Additionally, anonymous complaints can be made by victims and/or third parties using the university online [Sexual Misconduct Reporting Form](#) or by completing the [Sexual Misconduct Reporting Form \(PDF\)](#). Note that these anonymous complaints will result in an investigation, which may be limited however due to the inadequate information provided.

2.4.6 Regardless of whether an alleged victim of sex/gender-based discrimination or harassment ultimately files a complaint, if the university knows or has reason to know about possible sex/gender-based discrimination, harassment, or sexual violence, it must review the matter to determine if an investigation is warranted. The university must then take appropriate steps to eliminate any sex/gender-based discrimination or harassment, prevent its recurrence, and remedy its effects.

2.4.7 Individuals experiencing sexual harassment or sex/gender-based discrimination also have the right to file a formal grievance with federal authorities:

The U.S. Department of Education  
Office of Civil Rights  
District of Columbia Office  
400 Maryland Avenue, S.W.  
Washington, DC 20202-1475  
Telephone: (202) 453-6020

Facsimile: (202) 453-6021  
Email: [OCR.DC@ed.gov](mailto:OCR.DC@ed.gov)  
<http://www2.ed.gov/about/offices/list/ocr/index.html>

The U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Educational Opportunities Section, PHB  
Washington, D.C. 20530  
Telephone: (202) 514-4092 or 1-877-292-3804 (toll-free)  
Facsimile: (202) 514-8337  
Email: [education@usdoj.gov](mailto:education@usdoj.gov)  
<http://www.justice.gov/crt/>

2.4.8 In the event that an incident involves alleged misconduct by the Title IX coordinator or a deputy Title IX coordinator, complaints should be made directly to:

Director of Human Resources  
Human Resources Department  
UNC Pembroke  
Lumbee Hall, Room 347  
One University Drive  
Pembroke, NC 28372  
Telephone: 910-521-6279

### 3. DEFINITIONS

3.1 For this policy, the term “Sexual Misconduct” will denote all prohibited sex and gender-based discrimination and harassment violations (to include, sexual assault, sexual exploitation, domestic violence, dating violence, stalking, and all other sexual offenses).

3.2 **Bullying:** repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt or control another person, physically or mentally, that is not speech or conduct otherwise protected by the First Amendment.

3.2.1 The act of bullying, as defined above, often includes conduct in regards to race, color, creed, national origin, sex, sexual orientation, or disability and often involves an imbalance of power, aggression, and a negative, repeated behavior. For purposes of this policy, incidents of bullying, which fall under sexual misconduct violations, are based on gender (e.g., sex, sexual orientation, genetic identity, gender expression, and genetic information).

3.3 Campus Security Authorities: UNCP employees who have a duty to promptly report any information or knowledge of a broad array of crimes to campus law enforcement or the director of Title IX and Clery Compliance. The report can be made via the [Campus Security Authority Incident Report form](#). [Campus Security Authorities](#) are listed on the Title IX and Clery Act

Compliance website at <http://www.uncp.edu/about-uncp/administration/departments/title-ix/duty-employees>

**3.4 Coercion:** unreasonable and unwanted pressure to engage in sexual activity. Coercion includes, but is not limited to, threatening, cajoling and/or pressuring an individual into sexual activity. Consent is not provided if coercion is present.

**3.5 Consent:** explicit approval and permission to engage in sexual activity demonstrated by clear actions, words, or writings. Informed consent is freely and voluntarily given, it is mutually understood by all parties involved. If coercion, intimidation, threats, and/or physical force are used, there is no consent. If a person is mentally or physically incapacitated or impaired so that the person could not understand the fact, nature, or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption, or being asleep or unconscious, or under the age of legal consent, or unable to give consent under current law. Silence does not constitute consent, and past consent to sexual activities does not imply ongoing future consent. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Consent can be withdrawn at any time and requires an outward demonstration through understandable words or actions. Consent is active, not passive. Silence, moving away, crying, being asleep, passed out, confined, emotionally manipulated, coerced or intimidated is by this definition not consent.

**3.6 Dating Violence:** an act of violence which causes harm or may cause harm to a dating partner. This includes, but is not limited to, any unwanted touching or attempted unwanted touching.

3.6.1. The act of dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the survivor. Whether there was such a relationship will be gauged by its (a) length, (b) type, and (c) frequency of interaction.

**3.7 Discrimination:** any unlawful distinction, preference, or detriment to a student (or admission applicant) as compared to others that is based on that student's Protected Status and that is sufficiently serious to unreasonably interfere with or limit that student's ability to participate in, access, or benefit from educational programs, services, or activities (e.g., admission, academic standing, grades, assignments, or campus housing).

**3.7.1 Sex/gender-based Discrimination:** unlawful distinction, preference, or detriment to a student (or admission applicant) as compared to others that is based on that student's sex or gender.

**3.8 Domestic Violence:** an act of violence, which causes harm or may cause harm to a partner. This includes, but is not limited to, any unwanted touching or attempted unwanted touching.

3.8.1. The act of domestic violence is committed by a current or former spouse or intimate partner of a survivor; by a person with whom the survivor shares a child in common; by a person who is cohabitating or has cohabitated with a survivor as a spouse or intimate partner; by a person similarly situated to a spouse of the survivor under the domestic and family violence laws of the

jurisdiction in which the act of violence occurred; or by any other person against an adult or youth survivor who is protected from that person's acts under the domestic or family violence laws of the State of North Carolina.

**3.9 Harassment ~ Sexual:** unwelcome verbal, nonverbal, online, graphic, or physical aggression, intimidation, or hostile conduct based on a person's Protected Status, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the university's education or work programs or activities. Incidents of harassment related to sexual misconduct are based on gender (e.g., sex, sexual orientation, genetic identity, genetic expression, and genetic information).

3.9.1 Sexual Harassment may be subject to discipline when it takes the form of: 1) hostile environment; 2) quid pro quo harassment; and/or 3) retaliatory harassment.

**3.10 Harassment ~ Hostile Environment:** unwelcome conduct based on Protected Status that is so severe, persistent, or pervasive and objectively offensive that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the school's educational, social, and/or residential programs, thereby creating an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive. An isolated incident, unless sufficiently severe, does not amount to Hostile Environment Harassment.

**3.11 Harassment ~ Quid Pro Quo:** unwelcome conduct based on Protected Status where submission to or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education, employment, or participation in a University program or activity.

**3.12 Harassment ~ Retaliation:** a pattern of behavior(s) taken against an individual because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in the protected activity. Protected activity includes an individual's good faith: 1) participation in the reporting, investigation, or resolution of an alleged violation of this policy; or 2) opposition to policies, practices, or actions that the individual reasonably believes are in violation of this policy.

3.12.1 Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying complaint made in good faith was not substantiated.

3.12.2 Retaliation may be committed by and/or toward the Responding Party, the Reporting Party, or any other individual or group of individuals.

**3.13 Hazing:** acts likely to cause physical or psychological harm or social ostracism to any person when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the [hazing policy](#)) that is based on that person's Protected Status; incidents of hazing related to sexual misconduct violations are based on gender (e.g., sex, sexual orientation, genetic identity, genetic expression, and genetic information).

**3.14 Incapacitation:** the physical and/or mental inability to make an informed rational judgment. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks. Rather, incapacitation is determined by how the alcohol and/or drugs consumed impact a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. The first question is whether the complainant was incapacitated; then the second question, whether the accused student knew, or a sober, reasonable person in the position of the accused student should have known, that the complainant was incapacitated. Being intoxicated or drunk is never a defense to a complaint of sexual misconduct under this policy.

**3.15 Intimidation:** implied threats or acts that cause fear of harm in another.

**3.16 Protected Status:** a characteristic of a person, which cannot be targeted for discrimination: race, color, creed, religion, sex, sexual orientation, genetic identity, genetic information, genetic expression, national origin, age, disability, and veteran status. For purposes of this policy, protected status are based on sex/gender-based classifications (e.g., sex, sexual orientation, genetic identity, genetic information, and genetic expression).

**3.17 Reporting Party:** any person who may have been the subject of any sexual misconduct offense by an individual or organization regardless of whether the Reporting Party makes a complaint or a third party, on the behalf of a victim, makes a complaint of a potential sexual misconduct offense. This person may also be identified as "complainant," "victim," and/or "survivor."

**3.18 Responding Party:** any person or organization who has been accused of violating this policy. This person or organization may also be identified as "respondent," "accused," and/or "perpetrator."

**3.19 Responsible Employee:** designated UNCP employees with a duty to promptly report (as soon as practical) any information or knowledge of a sexual misconduct to the Title IX coordinator or deputy Title IX coordinators. [Responsible Employees](http://www.uncp.edu/about-uncp/administration/departments/title-ix/duty-employees) are listed on the Title IX and Clery Compliance website at <http://www.uncp.edu/about-uncp/administration/departments/title-ix/duty-employees>.

**3.20 Sexual assault:** the sexual exploitation, forcible penetration, or an act of sexual contact on the body of another person, male or female, without his or her consent; anal or vaginal penetration of another individual against that person's will and/or without that persons consent; any oral penetration of another individual by a sexual organ against that persons will and/or without that persons consent; or any insertion of another individuals genitals into ones mouth, anus, or vagina against that persons will and/or without that persons consent. Sexual Assault may include any involuntary sexual act in which a person is threatened, coerced, or forced to engage in against his or her will or while temporarily or permanently incapacitated. Sexual assault may be committed by a stranger or by a person known by the victim, including persons who are married or in a dating relationship with the victim.



3.20.1 Acts defined as sexual assault include rape, date rape, acquaintance rape, and gang rape, but may also include sexual touching of another person against his or her will or without consent, and forcing an unwilling person to touch another person sexually.

3.20.2 Non-consensual sexual intercourse includes: vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

3.20.3 Sexual assault occurs when sexual acts are committed either without consent, by force, threat, or intimidation, or through the use of the victim's mental or physical helplessness or incapacitation, of which the assailant was aware or should have reasonably been aware.

3.21 **Sexual exploitation:** non-consensual or abusive sexual advantage of another for one's own advantage or benefit or to benefit or advantage anyone other than the one being exploited and, that behavior does not otherwise constitute rape, sexual assault, or sexual harassment.

3.21.1. Examples of sexual exploitation include, but are not limited to: prostituting another student, non-consensual video or audio recording of sexual activity, going beyond the boundaries of consent (such as letting friends surreptitiously watch self or others having consensual sex or unauthorized distribution of photos or other materials of a sexual nature), engaging in voyeurism, and inducing incapacitation with the intent to rape or sexually assault another person or with the intent to create opportunity for a third party to rape or sexually assault another person.

3.22 **Sexual Misconduct Policy Violations:** any code of conduct violation based on the alleged victim's sex/gender-based Protected Status, which is severe enough to cause a discriminatory effect.

3.22.1 Examples of Sexual Misconduct Policy violations include inequity of gender found in cases of sexual harassment, sex/gender-based discrimination, sexual violence, domestic violence, dating violence, sex-based bullying and stalking.

3.23 **Sexual Violence:** sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

3.24 **Stalking:** engaging in a course of conduct directed at a specific individual that may cause a reasonable person to (a) fear for his or her safety or the safety of others; or, (b) suffer substantial emotional distress.

3.24.1. Acts of stalking include, but are not limited to, following another person, telephone calls, email and/or other electronic messages, meeting at classes or places of residence, and written and electronic notes or letters.

**3.25 Other sexual offenses:** obscene or indecent behavior, which include, but is not limited to, exposure of one's sexual organs without physically contacting the victim or the display of sexual behavior that would reasonably be offensive to others.

#### **4. CONSENT AND COERCION/EXPLOITATION**

4.1 The expectations of our campus community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing, and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you do not. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn; withdrawal of consent requires an outward demonstration, through understandable words or actions, which clearly conveys that a party is no longer willing to engage in sexual activity. Once consent is withdrawn, the sexual contact must cease immediately.

4.2 Additionally, there is a difference between seduction and coercion/exploitation. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion and exploitation happens, e.g., when someone is pressured unreasonably for sex or when someone is given drugs or alcohol in order to facilitate a sexual assault (as discussed below). Because alcohol or drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “No.”

#### **5. IDENTIFYING DRUG FACILITATED SEXUAL ASSAULT**

5.1 Alcohol and drugs have been used to facilitate sexual assaults and sexual violence against unsuspecting persons. Drugs and alcohol used to facilitate rape generally produce an anesthesia like effect, rendering victims unconscious or unable to give consent. Depending on the type of drug administered, the victim of a drug-facilitated sexual assault may exhibit signs of memory loss, dizziness, confusion, drowsiness, or a variety of other symptoms. The victim may be unable to provide a complete account of the assault or of the events surrounding it. Due to memory loss, there might be a delay in the reporting of the sexual assault. UNC Pembroke will consider such delays as a natural consequence of the offense and not allow reporting delays to discourage a comprehensive and thorough response. Even though it may be difficult to detect the drug used to facilitate a sexual assault, it may still be possible to investigate further. Immediate arrangements should be made for drug testing. A sexual assault victim should report

the assault to the Title IX coordinator, campus law enforcement and/or Southeastern Regional Medical Center who will assist in making arrangements for drug testing.

## **6. RIGHTS OF RESPONDING PARTY(IES)**

6.1 Any student enrolled at UNCP who is accused of sexual misconduct, will be afforded full procedural due process in the investigation and adjudication of his/her case.

## **7. RETALIATION**

7.1 The university will not tolerate retaliation in any form against any faculty, staff, student, or third-party (e.g., visitor/vendor) who files a complaint, serves as a witness, assists the Reporting Party or Responding Party, or participates in an investigation of discrimination or harassment. University policy and state and federal law prohibit retaliation against an individual for reporting discrimination, harassment, or sexual violence, or for participating in an investigation. Retaliation is a serious violation that can subject the offender to sanctions independent of the merits of the original complaint. Allegations of, or questions about, retaliation should be directed to the Title IX coordinator, a deputy Title IX coordinator, the director of student conduct, or the director of human resources.

## **8. CONFIDENTIALITY AND PRIVACY**

8.1 **Confidentiality:** Confidentiality means that information shared with designated campus or community professionals will only be disclosed with the student's express written permission, unless there is a continuing threat of serious harm to the student or to others or there is a legal obligation to reveal such information (e.g., where there is suspected abuse or neglect of a minor, or a lawful subpoena). An individual can seek confidential assistance and support by speaking with specially designated Confidential Resources (See Counseling and Advocacy, herein).

8.2 **Privacy:** Privacy generally means that information related to a complaint under this Policy will only be shared with those university employees who "need to know" in order to assist in its review, investigation, or resolution, or the implementation of applicable accommodations. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. If the decision is made to pursue a formal investigation, information related to the complaint will be shared with the Responding Party. Prior to making the disclosure, the Title IX coordinator will inform the Reporting Party and, if applicable, ensure appropriate interim measures to protect the Reporting Party and the safety of others. Information regarding a complaint will not be shared with either party's parents or guardians unless: the party is a minor, and sharing is permissible under the Family Education Rights and Privacy Act (FERPA); the party has signed a waiver that is compliant with FERPA; or there is an articulable threat to the health or safety of the party or other individuals.

8.3 **Records:** The Office of Title IX and Clery Compliance will maintain records of all complaints under this Policy and their outcomes in order to track patterns and systemic behaviors.

8.4 In compliance with applicable laws and regulations, the university will take precautions to protect the confidentiality and privacy of all parties. However, it should be understood that, to protect all members of the campus community, the university is obligated by federal law to inform the community of the occurrence of a sexual misconduct violation that poses imminent harm. Additionally, the university cannot control confidentiality violations by others who may be involved as witnesses or participants in, or aware of, a sexual misconduct offense and any subsequent investigation or conduct hearing.

8.5 A Reporting Party may request confidentiality and privacy at any point after a [formal] complaint is made. This type of request means that the Reporting Party does not want her/his identity known to the Responding Party and/or witnesses, or that the Reporting Party wishes to withdraw the complaint. If at any point the Reporting Party requests privacy, the university will make all reasonable attempts to comply with this request. In a situation where a Reporting Party requests privacy, or removes her/himself from the investigation or adjudicatory process (see below), the university's ability to investigate, respond to, or determine responsibility for the allegations may be limited. A Reporting Party who initially requests confidentiality may later retract that request and ask that a full and thorough investigation be conducted.

8.6 The university is required by Title IX to weigh the Reporting Party's request for confidentiality and privacy with the university's commitment to provide a reasonably safe and nondiscriminatory campus environment. There are situations in which the university may override the Reporting Party's request for confidentiality and privacy in order to meet its Title IX obligations. The university may take appropriate unilateral action in matters, which include but are not limited to:

8.6.1 Involvement of significant violence;

8.6.2 Involvement of multiple Reporting Parties;

8.6.3 Involvement of multiple Responding Parties;

8.6.4 Receipt of prior complaints of alleged misconduct at same location;

8.6.5 Receipt of prior complaints of alleged misconduct by same Responding Party(ies);

8.6.6 Whether violence was perpetrated with a weapon;

8.6.7 The age of the Reporting Party;

8.6.8 Threat of significant danger to the university community.

## **9. COUNSELING AND ADVOCACY**

9.1 UNCP's Counseling and Psychological Services provides counseling and other mental health services for victims of sexual misconduct, sexual assault, sexual exploitation, domestic violence, dating violence, stalking, or other sexual offenses on campus and within the community. These

same services and advocacy are available for students accused of sexual misconduct. Information shared by a Reporting Party and Responding Party with the Counseling Center will not be disclosed to anyone else, including university officials (except where there is a legal obligation in regards to suspected abuse or neglect of a minor or a lawful subpoena), without the party's express permission. Any individual may choose to seek support from confidential professionals on and off campus, including counselors, medical health providers, clergy, and rape crisis counselors.

9.2 The [Rape Crisis Center of Robeson County](#) or the [Southeastern Family Violence Center](#) may also assist with referrals for individual counseling and support groups. Robeson County Rape Crisis -Phone: The 24hr. crisis and administrative line is 910-739-6278, Address: Rape Crisis Center of Robeson County, 212 North Chestnut Street, Lumberton, NC 28358. Southeastern Family Violence Center –The 24hr. Crisis and Administrative line 910-739-8622, Address: Southeastern Family Violence Center, 108 W 9<sup>th</sup> Street, Lumberton, NC 28358.

## **10. ACCOMMODATION OPTIONS**

10.1 The Title IX coordinator and deputy Title IX coordinators will make every effort to make accommodations for the Reporting Party and Responding Party(ies) of sexual misconduct. Accommodations may include reasonable changes in work, academic, or housing arrangements. The student may also request a lock change if the accused had previous access to the housing arrangement. A student may also file a request in the Registrar's Office to remove his/her directory information from public access.

10.2 Accommodations may also include changes to class schedules to avoid contact with other individual(s) involved. Requests for such changes will be considered on the basis of their appropriateness and whether the requested change is reasonably available. Every effort will be made by the university to make the students feel cared for and safe.

## **11. CLERY ACT COMPLIANCE**

11.1 The University of North Carolina at Pembroke publishes an annual report of campus crimes, including sexual misconduct, as is required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). This landmark federal law, originally known as the Campus Security Act, requires colleges and universities across the United States to disclose information about crime on and around their campuses.

11.2 Federal Statistical Reporting Obligations: All university employees, including the confidential resources of the UNCP Student Health Services, Counseling and Psychological Services, and the CARE Team are encouraged to report non-identifying statistical information about certain crimes, including any alleged sexual misconduct, dating violence, domestic violence, or stalking. This statistical information is used for compiling the annual UNCP Campus Crime and Security Report and by UNCP law enforcement for purposes of advising the campus community of any potential safety risks or concerns.

11.3 Federal Timely Warning Obligations: Victims of 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.

## **12. PRESERVING EVIDENCE**

12.1 It is important that evidence of sexual misconduct be preserved; no one should alter the scene of a sexual misconduct offense. The Reporting Party should not change clothes, bathe, shower, drink or eat anything if possible, or brush his/her teeth before reporting the assault. Any items worn by the Reporting Party during the assault, but are not currently being worn, and any materials encountered during the assault (i.e. bed sheets, blankets, etc.) should be placed in a sealed paper bag or other secure container and brought with the Reporting Party to a local hospital.

## **13. EDUCATION AND AWARENESS PROGRAMS**

13.1 The Office of Title IX and Clery Compliance, the Student Health Center, Counseling and Psychological Services, and the Office of Student Conduct are responsible for planning and coordinating campus education and awareness programs about Title IX, to include all forms of harassment and sexual assault. Programs are presented regularly throughout the academic year in residence halls, academic classes, and for other student organizations and settings that are likely to reach students, faculty, and staff throughout the campus community. Campus-wide education and awareness activities are also conducted during Sexual Assault Prevention and Awareness Week. The Rape Aggression Defense (RAD) course is available to all students and is offered as a one (1) credit hour course. All students, faculty and staff are required to complete the Haven program when they join the UNCP community. The Haven program focuses on bystander intervention and risk reduction. Any student involved in a sexual misconduct incident will have access to the survivor and/or accused information packet with detailed information on resources, common reactions, and advocacy options.

## **14. RESPONSIBILITY TO REPORT**

14.1 Any student, faculty member, staff member, administrator, or visitor to the campus who has experienced, witnessed, or has knowledge of, or thinks they know of, a sexual assault, sexual misconduct, domestic violence, dating violence, stalking or other sexual offenses violations may, and is encouraged to, report the incident immediately to the Title IX coordinator, a deputy Title IX coordinator, campus law enforcement, director of student conduct, or the CARE Team as soon as possible.

14.2 UNCP employees designated as "[Responsible Employees](#)" have a duty to promptly report any knowledge or information regarding alleged sexual misconduct to the Title IX coordinator or a deputy Title IX coordinator. All Responsible Employees are named by title on the Title IX and

Clery Act website. The Responsible Employee (and all others) should use the [Sexual Misconduct Reporting form](#) also on the Title IX website.

14.3 UNCP employees designated as “[Campus Security Authorities](#)” have a duty to promptly report any knowledge or information regarding listed specific crimes, or an incident that may be a crime, to campus law enforcement or the director of Title IX and Clery Compliance.

14.4 Failure of a Responsible Employee, as described in this section, to report an incident of sexual or gender-based harassment or discrimination of which the Responsible Employee becomes aware is a violation of this policy and the Responsible Employee can be subject to disciplinary action.

14.5 Sexual misconduct may also be reported to [UNCP campus law enforcement](#) (910-521-6235); however, victims of sexual misconduct have the right to file or not file a complaint with campus or local law enforcement. If the incident occurred outside the jurisdiction of campus law enforcement, they will assist in reporting it to the proper authorities, e.g., the Pembroke Police Department (910-521-4333) or the [Robeson County Sheriff's Department](#) (910-671-3100), depending on where the incident occurred. Campus law enforcement will also assist in notifying the police department of another municipality or county if the incident occurred within another township, city, or county. Sexual assault, sexual misconduct, sexual exploitation, or other sexual offenses may also be reported to the Robeson County Rape Crisis Center (910-739-6278).

14.6 The welfare of students in our community is of paramount importance. As such, the university encourages all students, faculty, and staff to offer help and assistance to others in need. Sometimes, survivors and witnesses/bystanders are hesitant to report to university officials because they fear they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of the campus community that as many survivors and witnesses/bystanders as possible choose to report to university officials. To encourage reporting, the university offers survivors and witnesses/bystanders limited amnesty from being charged for certain policy violations related to the sexual misconduct incident. While policy violations cannot be completely overlooked, the university will provide educational options, rather than punishment, to those who offer their assistance to others in need.

## **15. COUNSELING AND PSYCHOLOGICAL SERVICES (CAPS) (Exempt from reporting)**

15.1 UNCP CAPS, as a confidential resource, will provide students (either survivor or accused) mental health care and support students through the options of reporting the offense, the investigation, and the adjudicatory process. CAPS will not share information about a student (including whether that student has received services) without the student’s express written permission, unless there is a continuing threat of serious violence to the student or to others or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor or a lawful subpoena). CAPS has a trained sexual assault advocate on staff.

## **16. RESIDENTIAL STAFF (Mandatory Reporters)**

16.1 A member of campus residential staff, such as resident assistants (RAs), hall directors, and resident administrators, is often the first to come in contact with a Reporting Party regarding a sexual misconduct offense. Therefore, it is important that all staff members receive training on how to respond to a Reporting Party and that person's possible experience with sex/gender-based discrimination and/or harassment, sexual assault, sexual exploitation, or other sexual offense.

16.2 Training will include, but not be limited to: review of student code of conduct; review of definitions of sexual misconduct offenses ; information refuting myths about sexual assault, sexual misconduct, sexual exploitation, domestic violence, dating violence, stalking, or other sexual offenses; training on issues of consent and coercion; including an understanding that a Reporting Party's use of alcohol and/or drugs does not mean that he/she is lying about sexual misconduct and information about appropriate sanctions resulting from a sexual misconduct offense.

16.3 Training will also include on-campus and off-campus resources and referrals and information about maintaining confidentiality and appropriate reporting requirements. These annual trainings can be provided either from internal or external sources. A Reporting Party's confidentiality should be respected at all times with no information that identifies the Reporting Party being released without his/her consent. Residential assistants have the responsibility to ensure safety whenever possible in the residence halls. Part of that responsibility is providing support and information to our students. While it is not a mandate that our students use these supports, RAs must be skilled in providing such information or referrals whenever appropriate. RAs as Campus Security Authorities are required to report sexual misconduct as per the Campus Security Act of 1998 (Clery Act); RAs as Responsible Employees are required to report sexual misconduct as per Title IX of the Education Amendments of 1972, as amended. All reports should be made directly to campus law enforcement and the Title IX coordinator. Reports may also be made to the resident administrator who then reports to the associate director of Residence Life who will notify the director of Housing and Residence Life. Reports may be made online for Clery notification: <https://publicdocs.maxient.com/incidentreport.php?UNCPembroke>. For sexual misconduct offenses notification: [https://publicdocs.maxient.com/reportingform.php?UNCPembroke&layout\\_id=3](https://publicdocs.maxient.com/reportingform.php?UNCPembroke&layout_id=3)

## **17. STUDENT HEALTH SERVICES (Confidential Reporters)**

17.1 At this time UNCP's Student Health Center does not have a Sexual Assault Nurse Examiner (SANE) on staff. If a student comes into the Student Health Center who has been sexually assaulted, the nurse on duty will assess the situation and refer the student to Southeastern Regional Medical Center for a medical exam and evidence collection with the consent of the survivor. Follow-up services may be provided through student health services if deemed appropriate. Student Health Services staff will not disclose any identifying information if the students chooses to remain anonymous.



## **18. SEXUAL MISCONDUCT ADVOCACY AND RESOURCE TEAM (SMART)**

18.1 [The Sexual Misconduct Advocacy and Resource Team \(SMART\)](#) is chaired by the Counseling and Psychological Services sexual assault advocate and consists of departments that serve as responsive resources for faculty and staff on campus, and as supportive liaisons and advocates for students as they seek campus and community services, and/or legal intervention after certain sexual misconduct offenses, to include sexual violence. SMART provides assistance to all students (victims and accused students) involved in a sexual misconduct offense. Assistance includes counseling, advocacy, medical care, and resource referrals, if applicable, to both the Rape Crisis Center and Southeastern Family Violence Center.