

CLERY COMPLIANCE

# TITLE IX

UNC PEMBROKE

## Sexual Harassment Policy

Prohibition against Sex-Based Discrimination, Harassment,  
Sexual Violence, and all other forms of Sexual Misconduct

PR 04.25.05

Sexual Harassment Policy:

Prohibition against Sex-Based Discrimination, and Harassment, Sexual Violence and all other forms of Sexual Misconduct

**Authority:** Chancellor

**History:**

- First Issued: Prior to 2015
- Revised: December 1, 2015; June 1, 2016; August 26, 2016 ; October 30, 2018
- Last Revised: July 30, 2020

**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](#)
- [2020 Title IX Regulations](#)
- [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' Title IX Regulations, 2020](#)
- [Office for Civil Rights' Dear Colleague Letter, April 2015](#)
- [Office for Civil Rights' Title IX Resource Guide, April 2015](#)
- [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](#)

Contact Information: Director, Title IX and Clery Compliance, 910.521.6281

## **1. Introduction**

1.1 **Non-Discrimination Statement:** The University of North Carolina at Pembroke (UNC Pembroke) 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, and national origin.

1.2 The university has zero-tolerance for sexual harassment in all forms, including but not limited to: sex 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. UNC Pembroke is committed to the prevention of sex-based discrimination and harassment, and sexual violence, to include, dating violence, domestic violence, stalking, and sexual assault.

## **2. Scope**

2.1 This policy encompasses Title IX of the Education Amendments Act of 1972, The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (The Clery Act) as amended by the Violence Against Women Act (VAWA), in 2013, and Title VII of the Civil Rights Act of 1964. (sexual harassment and Sexual violence offenses)

2.2 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 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 Clery Act and VAWA also prohibit sexual violence on university and college campuses and requires campuses to maintain and publicize crime statistics (to include statistics on sexual violence) and provide training and education programs. Title VII of the Civil Rights Act of 1964 also prohibits discrimination on the basis of sex, among other protected classes, and includes protections in the workplace for gay and transgender employees.<sup>1</sup>

2.3 The core purpose of this policy is the prohibition of all forms of sex based discrimination and harassment. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence and/or domestic violence. When an alleged violation of this nondiscrimination policy is reported, the allegations are subject to resolution using UNC Pembroke’s Sexual Harassment Resolution Process, which includes the option of: 1) Informal Resolution Process (Mediation), 2) Formal Grievance Process (FGP, Title IX sexual harassment), or 3) Inclusive Complaint Process (ICP, Non-Title IX sexual harassment). The appropriateness of which option to utilize is determined by the Title IX Coordinator, and as detailed below

2.4 When the Respondent is a member of the UNC Pembroke community, a formal complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the UNC Pembroke community. This community includes, but is not limited to, students,<sup>2</sup> student organizations, faculty, staff, and third parties such as guests, visitors, vendors, volunteers, contractors, invitees, and campers. The procedures below may be applied to particular incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

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<sup>1</sup> *Bostock v. Clayton County, Georgia*, 590 US \_\_\_\_ (2020). Case law prohibiting discrimination, on the basis of sex, and providing protections for sexual orientation and gender identity in employment.

<sup>2</sup> For the purpose of this policy, UNC Pembroke defines “student” as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with UNC Pembroke.

### **3. Mission Statement**

3.1 UNC Pembroke and its Office of Title IX and Clery Compliance are committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination and harassment based on a protected category, and retaliation for engaging in a protected activity. To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, UNC Pembroke has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation.

3.2 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.

3.3 In compliance with applicable federal and state legislation and university policy, the university maintains processes to provide redress and remediation to individuals or student groups who believe they have been the victim of these offenses.

3.4 UNC Pembroke values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved

### **4. Rationale for Policy**

4.1 The purpose of this policy is to provide the campus community with information for filing a complaint of sexual harassment when they feel they have been the victim of such conduct. If someone feels they have been the victim of sexual harassment by university faculty, staff, student, or any visitor to the campus, that person should notify the Office of Title IX and Clery Compliance immediately.

4.2 Anyone with questions regarding a possible incident of sexual harassment and/or wishing to make a complaint relating to sexual harassment (to include sexual violence) or sex-based discrimination may do so by reporting the concern to the Title IX coordinator, Investigator, 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>

4.3 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 could result in an investigation, which may be limited however due to the limited and inadequate information provided.

4.4 Regardless of whether an alleged victim of sex based discrimination or harassment ultimately files a complaint, if the university knows or has reason to know about possible sex-based discrimination, harassment, or sexual violence, it should review the matter to determine if supportive measures should be provided and remedial action is warranted. The university should take appropriate steps to eliminate any sex-based discrimination or harassment, prevent its recurrence, and remedy its effects.

### **5. Glossary**

5.1 **Advisor** means a person chosen by a party or appointed by UNC Pembroke to accompany the party to meetings related to the Sexual Harassment Resolution Process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.

5.2 **Attorney/Non-Attorney Advocate** means a person chosen by a student party, and at the student's expense, to accompany the student to meetings and hearings related to the Sexual Harassment Resolution

Process. The advocate is able to participate in all aspects of the Sexual Harassment Resolution Process. However, the student's Advisor conducts cross-examination during the hearing, if any.

5.3 **Business Day** means a weekday when UNC Pembroke is in normal operation.

5.4 **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

5.5 **Complaint (formal)** means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that UNC Pembroke investigate the allegation of sexual harassment. A "document filed by a Complainant" refers to a document or electronic submission (such as an email or through an online portal provided for this purpose by UNC Pembroke) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

5.6 **Confidential Resource** means an employee who is not a Mandatory Reporter of notice of harassment, discrimination, and/or retaliation (regardless of Clery Act Campus Security Authority status).

5.7 **Directly Related Evidence** is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon for the investigation report or by the Decision-maker. Compare to Relevant Evidence, below.

5.8 **Education program or activity** means locations, events, or circumstances where UNC Pembroke exercises substantial control over both the Respondent and the context in which the sexual harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by UNC Pembroke.

5.9 **Employee** means an applicant, probationary State employee, former probationary State employee, Career State employee or former career State employee.

5.10 **Final Determination** (also known as Final University Decision; FUD) means a conclusion by preponderance of the evidence or clear and convincing evidence that the alleged conduct did or did not violate policy. For faculty and student matters, the final determination authorized by the Chancellor or designee concludes the Sexual Harassment Resolution Process. Staff matters may be appealed to the Office of Administrative Hearings for final determination.

5.11 **Finding** means a conclusion by preponderance of the evidence that the conduct did or did not occur as alleged (as in a "finding of fact").

5.12 **Grievance Processes**

5.12.1 This policy has two grievance processes. While separate and distinct from each other, the sexual harassment prohibited by both policies may be similar.

5.12.2 **Formal Grievance Process (FGP)** means a method of formal resolution to address sexual harassment, which complies with the requirements of Title IX (34 CFR 106.45).

5.12.3 **Inclusive Complaint Process (ICP)** means a method of formal resolution to address a broad spectrum of sexual harassment offenses that does not comply with the requirements of Title IX (34 CFR Part 106.45). ICP applies only when FGP does not, as determined by the Title IX Coordinator.

5.13 **Grievance Process Pool** includes any investigators, hearing facilitator, Decision-maker, hearing board members, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

5.14 **Investigator** means the person or persons charged by UNC Pembroke with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report of Relevant Evidence and a file of Directly Related evidence.

5.15 **Mandatory Reporters**

5.15.1 **Official with Authority (OWA)** means an employee of UNC Pembroke explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on

behalf of UNC Pembroke and who is obligated by law to share knowledge, notice, and/or reports of sexual harassment, discrimination, and/or retaliation with the Office of Title IX and Clery Compliance.<sup>3</sup>

5.15.2 **Mandated Reporters** means a specific category of UNCP employees and students who are obligated by this policy to share knowledge, notice, and/or reports of sexual harassment, discrimination, and/or retaliation with the Office of Title IX and Clery Compliance (formerly known as Responsible Employees).

5.15.3 **Campus Security Authority** means a specific category of UNCP employees and students who have a duty under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act), as amended by the Violence Against Women Act, to share knowledge, notice, and/or reports of certain crimes, to include sexual violence (dating violence, domestic violence, stalking, and sexual assault) with the Office of Title IX and Clery Compliance (sexual violence offenses) or UNCP Police and Public Safety (all other crimes).

5.16 **Notice** means that an employee, student, or third-party informs the Office of Title IX and Clery Compliance or other Official with Authority of the alleged occurrence of sexually harassing, discriminatory, and/or retaliatory conduct.

5.17 **Parties** include the Complainant(s) and Respondent(s), collectively.

5.18 **Relevant Evidence** is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.

5.19 **Remedies** are post-Finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the UNC Pembroke's educational programs and activities.

5.20 **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

5.21 **Resolution** means the result of a grievance process:

5.21.1 Informal Resolution Process (Mediation)

5.21.2 Formal Grievance Process (Title IX sexual harassment cases)

5.21.3 Inclusive Complaint Process (Non-Title IX sexual harassment cases)

5.22 **Sanction** means a consequence imposed by UNC Pembroke on a Respondent who is found to have violated this policy.

5.23 **Sex based Discrimination** is the unlawful distinction, preference, or detriment to someone (e.g., student, employee, applicant for admission or employment) as compared to others that is based on that person's sex or gender.

5.24 **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, dating violence, domestic violence, stalking, and sexual assault. See Sections 9 & 70 of the Sexual Harassment Regulation for greater detail.

5.25 **Sexual Misconduct** means sex based offenses to include discrimination, harassment, and sexual violence (dating violence, domestic violence, stalking, and sexual assaults)

5.26 **Sexual Harassment Hearing Board Facilitator** (Hearing Facilitator) means the person responsible for post-investigation report communication with the parties, advisors, and witnesses and coordinating hearing procedures.

5.26.1 Facilitator for Student Cases: Director of Student Conduct

5.26.2 Facilitator for Faculty and Staff Cases: Director of Employee Relations

5.27 **Sexual Harassment Hearing Board Members** (Hearing Board members) refers to those faculty and staff who compose the hearing boards and have decision-making authority within the Formal Grievance process (Title IX sexual harassment cases) and the Inclusive Complaint Process (Non-Title IX sexual harassment cases) for faculty, staff, and student. This includes the members of

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<sup>3</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

the Hearing Boards and the Campus Appeals Board (student cases). Students on the Campus Hearing Board do not hear sexual harassment cases.

5.28 ***Sexual Harassment Resolution Process*** refers to the supportive measures, investigation, hearing, appeal, and sanctioning of faculty, staff, and student sexual harassment matters.

5.29 ***Supportive Measures*** are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve access to UNC Pembroke's education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or UNC Pembroke's educational environment, or deter sexual harassment.

5.30 ***Title IX Coordinator*** is the official designated by UNC Pembroke to ensure compliance with Title IX and UNC Pembroke's Sexual Harassment Resolution Process. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

5.31 ***Title IX Team*** refers to the Title IX Coordinator, investigator, any deputy coordinators, and any member of the Grievance Process Pool.

5.32 ***UNC Pembroke*** means a postsecondary education program that is a recipient of federal funding and required by federal law to address and remedy allegations of sexual harassment by faculty, staff, students, and visitors to campus.

## **6. Title IX Coordinator**

6.1 The Director of Title IX and Clery Compliance serves as the Title IX Coordinator and oversees implementation of UNC Pembroke's Sexual Harassment Policy and Regulation (this policy). The Title IX Coordinator has the primary responsibility for coordinating UNC Pembroke's efforts related to the intake, investigation, resolution, and implementation of supportive measures and sanctions to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this policy.

6.2 All parties will be provided with a comprehensive (electronic) brochure detailing options and resources, which the Title IX Coordinator may also go over in person with the parties, as appropriate.

### **6.3 Independence and Conflict-of-Interest**

6.3.1 The Title IX Coordinator oversees the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and the procedures in the accompanying Regulation. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

6.3.2 To raise any concern involving bias, conflict of interest, or misconduct by the Title IX Coordinator, contact the UNC Pembroke Chancellor or other appropriate official [chancellor@uncp.edu or 910.521.6201]. Concerns of bias, a potential conflict of interest, or misconduct by any other Title IX Team member should be raised with the Title IX Coordinator.

6.3.3 Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the UNC Pembroke Chancellor or other appropriate official or designee. [chancellor@uncp.edu]

6.3.4 Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator. [titleixcoordinator@uncp.edu]

## **7. Administrative Contact Information**

7.1 Complaints or notice of alleged policy violations or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Ronette Sutton Gerber, Esq.  
Director, Title IX and Clery Compliance  
Title IX Coordinator  
Clery Compliance Officer  
The School of Education Building, Room 334  
The University of North Carolina at Pembroke  
One University Drive | Post Office Box 1510 | Pembroke, NC 28372  
O: 910.521.6281 | F: 910.521.6165 | C: 910.674.0080  
[titleixcoordinator@uncp.edu](mailto:titleixcoordinator@uncp.edu)  
[www.uncp.edu/titleixclery](http://www.uncp.edu/titleixclery)

## **8. Title IX Team**

8.1 **Title IX Coordinator:** The Title IX Coordinator is responsible for an unbiased oversight of the university's response to sexual harassment reports, provisions of supportive measures, and for identifying and addressing any patterns or systemic problems revealed by such reports. The Title IX Coordinator ensures all necessary trainings on topics of sexual harassment and sexual violence, grievance processes, reporting obligations for faculty, staff, and students are conducted.

8.2 **Campus Investigator:** The Investigator oversees the prompt investigation of complaints alleging sexual discrimination and/or harassment; establishes findings as to whether sex based discrimination and/or harassment occurred; assigns remedies (including supportive measures) necessary to address the sex based discrimination and/or harassment, 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.

### **8.3 Title IX Deputy Coordinators:**

8.3.1 **Student Conduct:** The associate vice chancellor for Student Affairs has been designated by the chancellor as the deputy Title IX coordinator for complaints involving sex based discrimination and/or harassment. The associate vice chancellor for Student Affairs will assist the Title IX coordinator with investigating sexual harassment allegations and providing appropriate supportive measures and educational outreach to the Complainant and Respondent.

8.3.2 **Academic Affairs:** The associate vice chancellor for Academic Affairs has been designated by the chancellor as the deputy Title IX coordinator for complaints involving sex based discrimination and/or harassment. The associate vice chancellor for Academic Affairs will assist the Title IX coordinator with investigating sexual harassment allegations and providing appropriate supportive measures and educational outreach to the Complainant and Respondent.

8.3.3 **Human Resources:** The Director for Employee Relations and Workforce Development has been designated by the chancellor as the deputy Title IX coordinator for complaints involving sex based discrimination and/or harassment. The Director for Employee Relations and Workforce Development will assist the Title IX coordinator with investigating sexual harassment allegations and providing appropriate supportive measures and educational outreach to the Complainant and Respondent.

8.3.4 **Athletics:** The associate athletic director for Compliance has been designated by the chancellor as the deputy Title IX coordinator for complaints involving sex based discrimination and/or harassment. The associate athletic director for Compliance will assist the Title IX coordinator with investigating sexual harassment allegations and providing appropriate supportive measures and educational outreach to the Complainant and Respondent.

### **8.4 Grievance Process Pool**

8.4.1 Sexual Harassment Hearing Board Chairs



- 8.4.2 Sexual Harassment Hearing Board Members (Student and Faculty/Staff)
- 8.4.3 Advisors
- 8.4.4 Officials with Authority (OWA)
- 8.4.5 Mandated Reporters

**9. Mandatory Reporters Reporting Obligation of Employees**

9.1 **Officials with Authority (OWA):** In compliance with Title IX, UNC Pembroke has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, the Officials with Authority have a legal duty, upon receipt of notice or complaints of sexual harassment, to report information gleaned to the Office of Title IX and Clery Compliance.

- 9.1.1 Chancellor
- 9.1.2 Vice Chancellors
- 9.1.3 General Counsel
- 9.1.4 Chief of Staff
- 9.1.5 Athletic Director
- 9.1.6 Chief Communications & Marketing Officer
- 9.1.7 Associate Vice Chancellor for Campus Safety and Emergency Operations
- 9.1.8 All staff members: Office of Title IX and Clery Compliance
- 9.1.9 All staff members: Office of Human Resources
- 9.1.10 All staff members: Office of Student Conduct
- 9.1.11 All staff members: Office of Housing and Residence Life

9.2 **Mandated Reporters (MR):** UNC Pembroke has also classified most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual harassment, discrimination, sexual violence, and/or retaliation with an obligation to report this information to the Office of Title IX and Clery Compliance. Under this policy, Mandated Reporters receive notice or complaints on behalf of UNC Pembroke requiring a response by the Office of Title IX and Clery Compliance.

9.3 The section on Mandatory Reporting details which employees have this responsibility and their duties, accordingly.

**10. External Reporting**

10.1 Individuals who have experienced sexual harassment, discrimination, and/or sexual violence and feel that UNCP has not addressed their concerns or has not taken appropriate action on their behalf, have the right to file a formal grievance with federal authorities:

<p>U.S. Department of Education          Office for Civil Rights (OCR)          400 Maryland Avenue, SW          Washington, D.C. 20202-1100          Customer Service Hotline #: (800) 421-3481          Facsimile: (202) 453-6012          TDD#: (877) 521-2172  <a href="mailto:OCR@ed.gov">OCR@ed.gov</a>  <a href="http://www.ed.gov/ocr">http://www.ed.gov/ocr</a></p>	<p>The U.S. Department of Justice Civil Rights          Division 950 Pennsylvania Avenue, N.W.          Educational Opportunities Section, PHB          Washington, D.C. 20530          (202) 514-4092 or 1-877-292-3804 (toll-free)          Facsimile: (202) 514-8337  <a href="mailto:education@usdoj.gov">education@usdoj.gov</a> <a href="http://www.justice.gov/crt/">http://www.justice.gov/crt/</a></p>
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US Equal Employment Opportunity Commission 434 Fayetteville Street, Suite 700 Raleigh, NC 27601 (800) 669-4000 Facsimile: (919) 856-4151 TDD: (844) 234-5122 <a href="http://www.eeoc.gov">http://www.eeoc.gov</a>	
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## **11. Notice/Complaints of Sexual Harassment and/or Retaliation**

11.1 Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

11.1.1 File a complaint with, or give verbal notice to, the Title IX Coordinator, any member of the Title IX Team, Officials with Authority (OWA) or a Mandated Reporter. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office listed for the [Title IX Coordinator](#), [Title IX Staff and Deputy Title IX Coordinators](#), or any other university officials.

11.1.2 Report online, using the [Sexual Harassment Reporting Form](#). Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. UNC Pembroke tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant. Because reporting carries no obligation to initiate a formal response, and because UNC Pembroke respects Complainant requests to withdraw complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows UNC Pembroke to discuss and/or provide supportive measures.

11.1.3 Complainants experiencing sexual violence can also file a report with a Campus Security Authority and/or Police and Public Safety with the [Incident Reporting Form](#).

11.2 A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator, alleging a policy violation by a Respondent and requesting that UNC Pembroke investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by UNC Pembroke) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that UNC Pembroke investigate the allegations.

11.3 If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **12. Time Limits on Reporting**

12.1 There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to UNC Pembroke’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and /or provide remedies may be limited or impossible.

12.2 Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

12.3 When notice/complaint is affected by significant time delay, UNC Pembroke will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

12.4 Typically, this Policy and accompanying Regulation, are only applied to incidents that occurred after August 14, 2020. For incidents that occurred prior to August 14, 2020, previous versions of this Policy and accompanying Regulation will apply. Those versions are available from the Title IX Coordinator.

### **13. Supportive Measures**

13.1 UNC Pembroke will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

13.2 Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered without fee or charge to the parties to restore or preserve access to UNC Pembroke's education program or activity, including measures designed to protect the safety of all parties and/or UNC Pembroke's educational environment, and/or to deter harassment, discrimination, and/or retaliation.

13.3 The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, UNC Pembroke will inform the Complainant, in writing, that they may file a formal complaint with UNC Pembroke either at that time or in the future, if they have not done so already.

13.4 The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

13.5 UNC Pembroke will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair UNC Pembroke's ability to provide those supportive measures. UNC Pembroke will act to ensure as minimal an academic/occupational impact on the parties as possible.

13.6 UNC Pembroke will implement supportive measures in a way that does not unreasonably burden the other party.

13.7 These actions may include, but are not limited to:

13.7.1 Referral to counseling, medical, and/or other healthcare services

13.7.2 Referral to an Employee Assistance Program

13.7.3 Referral to community-based service providers

13.7.4 Visa and immigration assistance

13.7.5 Student financial aid counseling

13.7.6 Education to the institutional community or community subgroup(s)

13.7.7 Altering campus housing assignment(s)

13.7.8 Altering work arrangements for employees or student-employees

13.7.9 Safety planning

13.7.10 Trespass, Persona Non Grata (PNG), or Be-on-the-Lookout (BOLO) orders

13.7.11 Providing campus safety escorts

13.7.12 Providing transportation accommodations

13.7.13 Implementing contact limitations (mutual no contact orders) between the parties (Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement)

13.7.14 Academic support, extensions of deadlines, or other course/program-related adjustments

13.7.15 [Timely warnings](#)

13.7.16 Class schedule modifications, withdrawals, or leaves of absence

13.7.17 Increased security and monitoring of certain areas of the campus

13.7.18 Any other actions deemed appropriate by the Title IX Coordinator

13.8 Violations of Mutual No-Contact Orders or other restrictions will be referred to appropriate student or employee conduct processes for enforcement.

## **14. Emergency Removal**

14.1 UNC Pembroke can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Emergency Health and Safety Committee (also known as EHS) using its standard objective violence risk assessment procedures. See Appendix C.

14.2 **Show Cause Meeting:** In all cases in which an emergency removal is imposed, the student, employee will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

14.3 Once the Respondent has received notice of the impending emergency removal, the Respondent has one business day to submit an appeal to the Title IX Coordinator.

14.4 This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived.

14.5 A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

14.6 A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

14.7 The Title IX Coordinator will respond, in writing, to the written appeal within one business day.

14.8 The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

14.9 UNC Pembroke will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

14.10 At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

## **15. Promptness**

15.1 All allegations are acted upon promptly by UNC Pembroke once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but UNC Pembroke will avoid all undue delays within its control.

15.2 Any time the general timeframes for resolution outlined in UNC Pembroke procedures will be delayed, UNC Pembroke will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **16. Confidentiality/Privacy**

16.1 Every effort is made by UNC Pembroke to preserve the confidentiality of reports. UNC Pembroke will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be

the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

16.2 UNC Pembroke reserves the right to determine which UNC Pembroke officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the FERPA.

16.3 Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Office of Student Conduct, Office of Student Inclusion and Diversity, Counseling and Psychological Services, Housing and Residence Life, UNC Pembroke Police, the EHS Committee, Office of Human Resources, Office of General Counsel and the Title IX & Clery Compliance Committee. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

16.4 UNC Pembroke may contact parents/guardians of students to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

16.5 Confidentiality and mandated reporting are addressed more specifically [below](#).

## **17. Privacy & Confidentiality: Defined**

17.1 For the purpose of this policy, privacy and confidentiality have distinct meanings.

17.2 **Privacy** means that information related to a complaint will be shared with a limited number of UNC Pembroke employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the UNC Pembroke’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the FERPA, as outlined in UNC Pembroke’s FERPA policy. The privacy of employee records will be protected in accordance with Human Resources’ policies and state law and regulations.

17.3 **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. UNC Pembroke has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see section 27. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party, including the Title IX Coordinator, except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information will be shared by Confidential Resources with the Office for Title IX and Clery Compliance for statistical tracking purposes as required by the federal Clery Act. Other information may be shared only as required by law.

## **18. Jurisdiction of UNC Pembroke**

18.1 This Policy applies to the education program and activities of UNC Pembroke, to conduct that takes place on the campus or on property owned or controlled by UNC Pembroke, at UNC Pembroke-

sponsored events, and in buildings owned or controlled by UNC Pembroke's recognized student organizations. The Respondent must be a member of UNC Pembroke's community in order for this Policy to apply.

18.2 This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive a person of access to UNC Pembroke's educational program. UNC Pembroke may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial UNC Pembroke interest.

18.3 Regardless of where the conduct occurred, UNC Pembroke will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial UNC Pembroke interest includes:

18.3.1 Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;

18.3.2 Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual;

18.3.3 Any situation that significantly impinges upon the rights, property, or achievements of others significantly breaches the peace and/or causes social disorder; and/or

18.3.4 Any situation that substantially interferes with the educational interests or mission of UNC Pembroke.

18.4 If the Respondent is unknown or is not a member of the UNC Pembroke community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options. If criminal conduct is alleged, UNC Pembroke can assist in contacting local or campus law enforcement if the individual would like to file a police report.

18.5 Further, even when the Respondent is not a member of UNC Pembroke's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator.

18.6 In addition, UNC Pembroke may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from UNC Pembroke property and/or events.

18.7 All vendors serving UNC Pembroke through third-party contracts are subject to the policies and procedures of their employers and/or to these policies and procedures to which their employer has agreed to be bound by their contracts.

18.8 When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

18.9 Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to UNC Pembroke where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **19. Online Harassment and Misconduct**

19.1 The policies of UNC Pembroke are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on UNC Pembroke's education program and activities or when they involve the use of UNC Pembroke networks, technology, or equipment.

19.2 Although UNC Pembroke may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to UNC Pembroke, it will engage in a variety of means to address and mitigate the effects.

19.3 Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute, revenge pornography,

breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the internet or other technology to harm another member of the UNC Pembroke community.

19.4 Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of UNC Pembroke's control (e.g., not on UNC Pembroke networks, websites, or between UNC Pembroke email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

19.5 Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

19.6 Off-campus harassing speech by employees, whether online or in person, may be regulated by UNC Pembroke only when such speech is made in an employee's official or work-related capacity.

## **20. Policy on Nondiscrimination**

20.1 UNC Pembroke adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in public institutions of higher education.

20.2 UNC Pembroke does not discriminate against any employee, applicant for employment, student, or applicant for admissions on the basis of:

20.2.1 Race,

20.2.2 Religion,

20.2.3 Hearing status,

20.2.4 Personal appearance,

20.2.5 Color,

20.2.6 Sex,

20.2.7 Pregnancy,

20.2.8 Political affiliation,

20.2.9 Source of income,

20.2.10 Place of business,

20.2.11 Residence,

20.2.12 Religion,

20.2.13 Creed,

20.2.14 Ethnicity,

20.2.15 National origin (including ancestry),

20.2.16 Citizenship status,

20.2.17 Physical or mental disability (including perceived disability)

20.2.18 Age,

20.2.19 Marital status,

20.2.20 Family responsibilities,

20.2.21 Sexual orientation,

20.2.22 Gender identity,

20.2.23 Gender expression,

20.2.24 Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),

20.2.25 Predisposing genetic characteristics,

20.2.26 Domestic violence victim status,

20.2.27 Height,

20.2.28 Weight, or

20.2.29 Any other protected category under applicable local, state, or federal law, including any protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, and/or other human/civil rights agencies.

20.3 This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the campus community whose acts deny, deprive, or limit the educational or employment (or residential and/or social) access, benefits, and/or opportunities of any member of the campus community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the UNC Pembroke Policy on Nondiscrimination.

20.4 When brought to the attention of UNC Pembroke, any such discrimination will be promptly and fairly addressed and remedied by UNC Pembroke according to the appropriate university grievance process.

## **21. Policy on Discriminatory Harassment**

21.1 Faculty, staff, and students are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussion inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

21.2 The sections below describe the specific forms of legally prohibited sexual harassment that are also prohibited under this Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of this Policy, though supportive measures will be offered to those impacted.

21.3 This offense definitions encompasses actual and/or attempted offenses.

## **22. Discriminatory Harassment**

22.1 Discriminatory harassment constitutes a form of discrimination that is prohibited by this Policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

22.2 UNC Pembroke does not tolerate discriminatory harassment of any employee, student, visitor, or third-party. UNC Pembroke will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

22.3 A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

22.4 When discriminatory harassment rises to the level of creating a hostile environment, UNC Pembroke may also impose sanctions on the Respondent through application of the appropriate grievance process below.

22.5 UNC Pembroke reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under this Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolutions and/or other informal resolution mechanisms.

22.6 For assistance with Alternative Resolution and other informal resolution techniques and approaches, employees should contact the Title IX Coordinator.



**23. Sexual Harassment: Two Distinct Definitions and Resolution Processes**

23.1 There are two sections of this policy on the prohibition of sexual harassment

23.1.1 First: Sexual Harassment prohibition in compliance with Title IX and this policy

23.1.2 Second: Sexual Harassment prohibition in compliance with this policy (Non-Title IX)

**24. Sexual Harassment Prohibition: Title IX Compliant**

24.1 Title IX sexual harassment adjudicated through the Formal Grievance Process (FGP)

24.1.1 The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of North Carolina regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

24.1.2 In compliance with Title IX, UNC Pembroke has adopted the following definition of sexual harassment in order to address the unique environment of an academic community.

24.1.3 Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

24.2 **Title IX Sexual Harassment**, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as: Conduct on the basis of sex/gender or that is sexual in nature that satisfies one or more of the following:

24.2.1 **Quid Pro Quo:**

24.2.1.a.an employee of UNC Pembroke,

24.2.1.b conditions the provision of an aid, benefit, or service of UNC Pembroke,

24.2.1.c on an individual’s participation in unwelcome sexual conduct;

24.2.2. **Sexual Harassment:**

24.2.2.a. an unwelcome conduct,

24.2.2.b.determined by a reasonable person,

24.2.2.c to be so severe, and

24.2.2.d pervasive, and,

24.2.2.e objectively offensive,

24.2.2.f that it effectively denies a person equal access to UNC Pembroke’s education program or activity.<sup>4</sup>

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<sup>4</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- 24.2.3 **Sexual Assault (as defined by the Clery Act):**
- 24.2.3.a. Any sexual act<sup>5</sup> directed against another person<sup>6</sup>,
  - 24.2.3.b. without the consent of the Complainant,
  - 24.2.3.c. including instances in which the Complainant is incapable of giving consent.
- 24.2.4. **Incest:**
- 24.2.4.a. Non-forcible sexual intercourse,
  - 24.2.4.b. between persons who are related to each other,
  - 24.2.4.c. within the degrees wherein marriage is prohibited by North Carolina law.
- 24.2.5. **Statutory Rape:**
- 24.2.5.a. Non-forcible sexual intercourse,
  - 24.2.5.b. with a person who is under the statutory age of consent of sixteen (16 yrs. old).<sup>7</sup>
- 24.2.6. **Dating Violence:**
- 24.2.6.a. violence,
  - 24.2.6.b. on the basis of sex,
  - 24.2.6.c. committed by a person,
  - 24.2.6.d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - 24.2.6.d.1. The existence of such a relationship shall be determined based on the Complainant's

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<sup>5</sup> A "sexual act" is specifically defined by federal regulations to include one or more of the following:

Forcible Rape:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age<sup>#</sup> or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),

or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>6</sup> This would include having another person touch you sexually, forcibly, or without their consent.

<sup>7</sup> In North Carolina, the age of consent is sixteen (16). The state has a close in age exemption, also known as "Romeo and Juliet Law," which allows a person to have consensual sexual intercourse with a minor who is fifteen (15) or younger if he or she is less than four years older. N.C. Gen. Stat. § 14-27.23, § 14-27.25, §§ 14-27.24, 14-27.25 (2018).

statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

24.2.6.d.1.a. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

24.2.6.d.1.b. Dating violence does not include acts covered under the definition of domestic violence.

**24.2.7. Domestic Violence:**

24.2.7.a. violence,

24.2.7.b. on the basis of sex,

24.2.7.c. committed by a current or former spouse or intimate partner of the Complainant,

24.2.7.d. by a person with whom the Complainant shares a child in common, or

24.2.7.e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or

24.2.7.f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North Carolina, or

24.2.7.g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.

24.2.7.h. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**24.2.8. Stalking:**

24.2.8.a. engaging in a course of conduct,

24.2.8.b. on the basis of sex,

24.2.8.c. directed at a specific person, that

24.2.8.c.1. would cause a reasonable person to fear for the person's safety, or

24.2.8.c.2. the safety of others; or

24.2.8.c.3. Suffer substantial emotional distress.

24.2.8.d. For the purposes of this definition—

24.2.8.d.1. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

24.2.8.d.2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

24.2.8.d.3. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

24.3 UNC Pembroke reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy. The most serious offenses are likely to result in suspension/expulsion/termination, where warranted.

**25. Sexual Harassment Prohibition: Non-Title IX**

25.1 In addition to the forms of sexual harassment described above, which are covered by Title IX, UNC Pembroke prohibits the following offenses as forms of sex based discrimination and/or harassment that may be within or outside of Title IX and will investigate and adjudicate under the Inclusive Complaint Process (ICP).

25.2 **Sexual Discrimination**, defined as actions, on the basis of sex, that deprive, limit, or deny other members of the campus community of educational or employment access, benefits, or opportunities, including disparate treatment.

25.3 **Sexual Harassment** is 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 harassment are based on gender (e.g., sex, sexual orientation, genetic identity, genetic expression, and genetic information).

25.3.1 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.

25.4 **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 UNC Pembroke'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.

25.5 **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.

25.6 **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.

25.6.1 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.

25.6.2 Retaliation may be committed by and/or toward the Complainant, Respondent, or any other individual or group of individuals.

25.7 **Sexual Violence** as defined by the Clery Act (dating violence, domestic violence, stalking, and sexual assault (i.e., rape, fondling, incest, and statutory rape)).

25.8 **Sexual Exploitation**, defined as: an individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this Policy. Examples of Sexual Exploitation include, but are not limited to:

25.8.1 **Sexual voyeurism** includes acts such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed;

25.8.2 **Invasion of sexual privacy** meaning taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the 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), including the making or posting of revenge pornography;

25.8.3 Prostituting another person;

25.8.4 Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection;

25.8.5 Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity;

25.8.6 Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections;

25.8.7 Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity;

- 25.8.8 Knowingly soliciting a minor for sexual activity;
- 25.8.9 Engaging in sex trafficking;
- 25.8.10 Knowing creation, possession, or dissemination of child pornography; and
- 25.9 Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person.
- 25.10 **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in Another.
- 25.11 **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the UNC Pembroke community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.
- 25.12 **Bullying**, defined as:
  - 25.12.1 Repeated and/or severe
  - 25.12.2 aggressive behavior
  - 25.12.3 likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
  - 25.12.4 that is not speech or conduct otherwise protected by the First Amendment.
- 25.13 Sanctions for the above-listed sexual harassment offenses range from reprimand through expulsion/termination.

## **26. Unethical Relationships**

### **26.1 Expectations Regarding Unethical Relationships<sup>8</sup>**

26.2 There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

26.3 Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. The UNC Pembroke does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the UNC Pembroke. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

26.4 Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.

26.5 This type of relationship includes Resident Advisors (RAs) and students over whom the RA has direct responsibility. While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX

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<sup>8</sup> This Unethical Relationship section is included here to inform the campus community of UNC Pembroke's expectations. Regardless, any violation of this section is a Human Resources/Employee Relations matter and will be addressed by the Office of Human Resources unless the elements of the definition of harassment are met.

Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

**27. Sanctions:**

27.1 UNC Pembroke reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

**28. Force, Coercion, Consent, and Incapacitation<sup>9</sup>**

28.1 As used in the offenses discussed in this Policy, the following definitions and understandings apply:

**28.2 Force:**

28.2.1 Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me, I’ll do what you want.”).

28.2.2 Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

28.3 **Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**28.4 Consent is:**

28.4.1 knowing, and

28.4.2 voluntary, and

28.4.3 clear permission

28.4.4 by word or action

28.4.5 to engage in sexual activity.

28.4.6 Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

28.4.7 If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

28.4.8 For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

28.4.9 Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

28.4.10 Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

28.4.11 Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on UNC Pembroke to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a

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<sup>9</sup> The State of North Carolina does not have a definition of consent.

reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar and previous patterns that may be evidenced.

28.4.12 Consent in relationships must also be considered in context. When parties consent to BDSM<sup>10</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so UNC Pembroke’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

28.5 **Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

28.5.1 It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

28.5.2 Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction).

28.5.3 Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

28.5.4 This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## 29. **Retaliation**

29.1 Protected activity under this Policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

29.2 Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. UNC Pembroke will take all appropriate and available steps to protect individuals who fear they may be subjected to retaliation.

29.3 UNC Pembroke and any member of UNC Pembroke’s community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

29.4 Filing a complaint within the Inclusive Complaint Process (ICP) could be considered retaliatory if those charges could be applicable under the Formal Grievance Process (FGP), when the ICP charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within FGP that is not provided by ICP. Therefore, UNC Pembroke vets all complaints carefully to ensure this does not happen and to ensure that complaints are routed to the appropriate process.

29.5 The exercise of rights protected under the First Amendment does not constitute retaliation.

29.6 Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

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<sup>10</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

### **30. Mandatory Reporting**

30.1 All UNC Pembroke employees (faculty and staff) and students are expected to report actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions.

30.2 In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

30.3 If a Complainant expects formal action in response to their allegations, reporting to the Title IX Coordinator or any Mandatory Reporter (OWA or Mandated Reporter) can connect them with resources to report crimes and/or policy violations. The Mandatory Reporter will immediately pass reports to the Title IX Coordinator (and campus police, if desired by the Complainant), who will take action when an incident is reported to them.

30.4 The following sections describe the reporting options at UNC Pembroke for a Complainant or third-party (including parents/guardians):

30.4.1 Confidential Resources: If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

#### **30.4.2. On-campus:**

30.4.2.a. Counseling and Psychological Services (CAPS)

30.4.2.b. Sexual Assault Advocate

30.4.2.c. Student Health Services

#### **30.4.3 Off-campus (non-UNCP employees):**

30.4.3.a. Employee Assistance Program

30.4.3.b. Licensed professional counselors and other medical providers

30.4.3.c. Rape Crisis Center of Robeson County counselors (or other rape crisis centers)

30.4.3.d. Southeastern Family Violence Center counselors

30.4.3.e. Clergy/Chaplains

30.4.3.f. Attorneys

30.4.4. All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

30.4.5. Counseling and Psychological Services counselors for students and the Employee Assistance Program for employees are available to help free of charge and may be consulted on an emergency basis 24/hours a day.

30.4.6. UNC Pembroke employees who have confidential privilege as described above, and who receive reports within the scope of their confidential roles will submit anonymous statistical information for Clery Act purposes, in a timely manner, to the Office of Title IX and Clery Compliance.

### **31. Anonymous Notice to Mandatory Reporters (OWA and Mandated Reporters)**

31.1 At the request of a Complainant, notice may be given by a Mandatory Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. However, Mandatory Reporters cannot remain anonymous themselves.



31.2 If a Complainant has requested that a Mandatory Reporter maintain the Complainant's anonymity, the Mandatory Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandatory Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

31.3 Anonymous notice will be investigated by UNC Pembroke to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits UNC Pembroke's ability to investigate, respond, provide supportive measures, and remedies, depending on what information is shared.

31.4 When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandatory Reporter, but all other details must be shared with the Title IX Coordinator. Mandatory reporters cannot maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled.

### **32. Mandatory Reporters and Formal Notice/Complaints**

32.1 Most employees of UNC Pembroke (including some student employees), with the exception of those who are designated as Confidential Resources, are Mandatory Reporters (OWA and Mandated Reporters) and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

32.2 Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

32.3 Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandatory Reporters, as those details must be shared with the Title IX Coordinator.

32.4 Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates a desire for a report to be made or to seek a specific response from UNC Pembroke.

32.5 Supportive measures may be offered as the result of such disclosures without formal UNC Pembroke action.

32.6 Failure of an Official with Authority (OWA), as described in this section, to report an incident of harassment or discrimination of which they become aware is a violation of Title IX and this Policy and indicates UNC Pembroke's deliberate indifference to the possible sexual harassment thereby jeopardizes the Complainant's safety and UNC Pembroke's federal funding. For not reporting the information to the Title IX Coordinator, the OWA can be subject to disciplinary action.

32.7 Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of this Policy and can be subject to disciplinary action for failure to comply.

32.8 Finally, it is important to clarify that a Mandatory Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

### **33. When a Complainant Does Not Wish to Proceed**

33.1 If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state and federal law.

33.2 The Title IX Coordinator has ultimate discretion over whether UNC Pembroke proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process usually upon completion of an appropriate violence risk assessment conducted by the Emergency Health and Safety Committee (EHS).

33.3 The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires UNC Pembroke to pursue formal action to protect the community.

33.4 A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. UNC Pembroke may be compelled to act on alleged employee misconduct regardless of a Complainant's wishes.

33.5 The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and UNC Pembroke's ability to pursue a grievance process fairly and effectively.

33.6 When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

33.7 When UNC Pembroke proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy regardless of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

33.8 Note that UNC Pembroke's ability to remedy and respond to notice may be limited if the Complainant does not want UNC Pembroke to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing UNC Pembroke's obligation to protect its community.

33.9 In cases in which the Complainant requests confidentiality and no formal action and the circumstances allow UNC Pembroke to honor that request, UNC Pembroke may offer informal resolution options (see Sexual Harassment Regulation), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

33.10 If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by UNC Pembroke, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

#### **34. Federal Timely Warning Obligations**

34.1 Parties reporting dating violence, domestic violence, stalking and/or sexual assault should be aware that under the Clery Act, UNC Pembroke must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

34.2 UNC Pembroke will ensure that a Complainant'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 potential danger.

#### **35. False Allegations and Evidence**

35.1 Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

35.2 Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence or deliberately misleading an official conducting an investigation can be subject to discipline under appropriate university policies.

### **36. Amnesty for Complainants and Witnesses**

36.1 The UNC Pembroke community encourages the reporting of sexual harassment and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to UNC Pembroke officials or participate in the grievance processes because they fear they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

36.2 It is in the best interests of the UNC Pembroke community that Complainants choose to report misconduct to UNC Pembroke officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

36.3 To encourage reporting and participation in the process, UNC Pembroke maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

36.4 Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

36.5 **Students:** Sometimes, students are hesitant to assist others for fear they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to UNC Pembroke Officials, e.g., Resident Advisors, Community Directors, and /or campus police).

36.6 UNC Pembroke maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, UNC Pembroke may provide purely educational options (e.g., reflection paper, campus community service) with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

36.7 **Employees:** Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear they may get in trouble themselves. For example, an employee who has violated the Unethical Relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to UNC Pembroke officials.

36.8 UNC Pembroke may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Employee Respondents and witnesses on a case-by-case basis.

### **37. Federal Statistical Reporting Obligations**

37.1 Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act) to the Office of Title IX and Clery Compliance:

37.2 All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;

37.3 Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;

37.4 VAWA<sup>11</sup>-based crimes, which include dating violence, domestic violence, stalking, and sexual assault; and

37.5 Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

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<sup>11</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

37.6 Reportable information includes the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are required) for publication in the Annual Security and Fire Safety Report (Clery Report) and the daily campus crime log.

37.7 Campus Security Authorities include: Department Chairs, directors of programs, student affairs/student conduct staff, campus law enforcement/public safety/security, coaches, athletic directors, athletic trainers, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

#### [Reporting Obligations of Employees](#)

### **38. Preservation of Evidence**

38.1 The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and is particularly time-sensitive.

38.2 UNC Pembroke will inform the Complainant of the importance of preserving evidence by taking the following actions:

38.2.1 Seek forensic medical assistance at a local hospital, ideally within 120 hours of the incident (sooner is better).

38.2.2 Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.

38.2.3 Try not to urinate.

38.2.4 If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.

38.2.5 If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).

38.2.6 Seeking medical treatment can be essential even if it is not for the purpose of collecting forensic evidence (e.g., treatment for potential STDs and pregnancy)

38.3 During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

### **39. Education and Awareness Programs**

39.1 The Office of Title IX and Clery Compliance, the Student Health Center, Counseling and Psychological Services, Police and Public Safety, and the Office of Student Conduct are responsible for planning and coordinating campus education and awareness programs about sexual harassment and sexual violence.

39.2 Programs are presented regularly throughout the academic year in departmental meetings, 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 the year, to include Sexual Assault Prevention and Awareness Week. The Rape Aggression Defense (RAD) course is available to all students and is offered as a one (1) hour credit course. All students are required to complete the Haven program when they join the UNC-P community. The Haven program focuses on bystander intervention and risk reduction. All new employees receive Title IX and Clery training as part of their new employee onboarding process.

39.3 Any student involved in a sexual harassment incident will be provided an information packet with detailed information on this policy and regulation, resources, common reactions, and advocacy options.

**APPENDIX A**  
**THE PARTIES' STATEMENT OF THE RIGHTS**

1. The right to an equitable investigation and resolution of all credible allegations of prohibited sex-based harassment, discrimination, and/or retaliation made in good faith to UNC Pembroke officials.
2. The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
3. The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) and any attendant adjustments needed to clarify potentially implicated policy violations.
4. The right to be informed in advance of any public release of information by UNC Pembroke regarding the allegation(s) or underlying incident(s), whenever possible.
5. The right not to have any personally identifiable information released by UNC Pembroke to the public without consent provided, except to the extent permitted by law.
6. The right to be treated with respect by UNC Pembroke officials.
7. The right to have UNC Pembroke Policy and these procedures followed without material deviation.
8. The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
9. The right not to be discouraged by UNC Pembroke officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
10. The right to be informed by UNC Pembroke officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by UNC Pembroke in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
11. The right to have allegations of violations of this Policy responded to promptly and with sensitivity by UNC Pembroke law enforcement and/or other UNC Pembroke officials.
12. The right to be informed of available supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; and/or other services, both on campus and in the community.
13. The right to a UNC Pembroke-implemented mutual no-contact order (or a no-trespass order against a non-affiliated third party) when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
14. The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of sexual discrimination, harassment, and/or retaliation, if such

changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:

- a. Relocating an on-campus student's housing to a different on-campus location
  - b. Assistance from UNC Pembroke staff in completing the relocation
  - c. Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - d. Transportation accommodations
  - e. Visa/immigration assistance
  - f. Arranging to dissolve a housing contract and provide a pro-rated refund
  - g. Exam, paper, and/or assignment rescheduling or adjustment
  - h. Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - i. Transferring class sections
  - j. Temporary withdrawal/leave of absence (may be retroactive)
  - k. Campus safety escorts
  - l. Alternative course completion options.
15. The right to have UNC Pembroke maintain such actions for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair UNC Pembroke's ability to provide the supportive measures.
  16. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
  17. The right to have the Investigator(s), Advisors, and/or Hearing Board members to identify and question relevant available witnesses, including expert witnesses.
  18. The right to provide the Investigator and Hearing Board members with a list of questions that, if deemed relevant by the Investigator and/or Hearing Board Chair, may be asked of any party or witness.
  19. The right to have inadmissible prior sexual predisposition/history or irrelevant character excluded by the Hearing Board Chair.
  20. The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  21. The right to a fair opportunity to provide the Investigator with their account of the alleged misconduct and have that account be on the record.
  22. The right to receive a copy of all relevant and directly related evidence obtained by the investigation, subject to privacy limitations imposed by state and federal law and a ten (10) business days to review and comment on the evidence.
  23. The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to the hearing.
  24. The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.

25. The right to regular updates on the status of the investigation and/or resolution.
26. The right to have reports of alleged Policy violations addressed by Investigators, the Title IX Coordinator, and Hearing Board members who have received at least five (5) hours of relevant annual training.
27. The right to a Hearing Board that is not single-sex in its composition<sup>12</sup>.
28. The right to preservation of confidentiality/privacy, to the extent possible and permitted by law.
29. The right to meetings, interviews, and/or hearings that are closed to the public.
30. The right to petition that any UNC Pembroke representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
31. The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
32. The right to have an attorney/non-attorney advocate of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
33. The right to the use of the appropriate standard of proof, preponderance of the evidence, to make a finding regarding responsibility after an objective evaluation of all relevant evidence.
34. The right to be present, including presence via remote technology, during all testimony given and evidence presented during a grievance hearing.
35. The right to have an impact statement considered by the Hearing Board Members following a determination of responsibility for any allegation, but prior to sanctioning.
36. The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process, if any, and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
37. The right to be informed in writing of when a decision by UNC Pembroke is considered final and any changes to the final determination or sanction(s) that occur post Notification of Outcome.
38. The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by UNC Pembroke.
39. The right to a fundamentally fair resolution as defined in these procedures.

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<sup>12</sup> UNC Pembroke will make best effort to comply with non-single-sex hearing boards, however, this may prove problematic during summer months when most faculty are not available for participation on hearing boards and our Grievance Process Pool is limited.

## **APPENDIX B**

### **POLICY EXAMPLES**

#### **Examples of sexual harassment include:**

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and regardless of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their sexual identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo there. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

#### **Examples of Stalking**

- Students A and B were friends with benefits. Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if student B had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.



- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

### **Examples of Sexual Assault:**

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to "jerk him off" (hand to genital contact). Amanda would have never done it but for Bill's incessant coercion.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.
- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

### **Examples of Retaliation:**

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes approval for the faculty member to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

## APPENDIX C

### VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A ***Violence Risk Assessment (VRA)*** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Emergency Health and Safety Committee members (EHS) and CARE team members.

A VRA occurs in collaboration with the Title IX Coordinator, EHS, and CARE, and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of ***risk factors*** that escalate the potential for violence;
2. a determination of ***stabilizing influences*** that reduce the risk of violence;
3. a contextual ***analysis of violence risk*** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of ***intervention and management*** approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the EHS committee. The EHS committee will assign a trained individual(s) to perform the assessment, according to the specific nature of the sexual harassment case.

The assessor(s) will follow the process for conducting a violence risk assessment as outlined in the EHS policy and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric,<sup>13</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>14</sup> The Extremist Risk Intervention Scale (ERIS),<sup>15</sup> Looking Glass,<sup>16</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>17</sup> Historical Clinical Risk Management (HCR-20),<sup>18</sup> and MOSAIC.<sup>19</sup>

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<sup>13</sup> [www.nabita.org/tools](http://www.nabita.org/tools)

<sup>14</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)

<sup>15</sup> [www.nabita.org/resources/assessment-tools/eris/](http://www.nabita.org/resources/assessment-tools/eris/)

<sup>16</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass)

<sup>17</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>18</sup> [hcr-20.com](http://hcr-20.com)

<sup>19</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)

The VRA is conducted independently from the Title IX process, informed by it but free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The EHS conducts a VRA process and makes a written recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community.

Direct all questions or concerns regarding this policy to:

**Ronette Sutton Gerber, Esq.**

Director, Title IX and Clery Compliance

Title IX Coordinator

Clery Compliance Officer

One University Drive | Post Office Box 1510 | Pembroke, NC 28372

O: 910.521.6281 | F: 910.521.6165 | C: 910.674.0080

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