

FAYETTEVILLE STATE UNIVERSITY

PROHIBITED SEXUAL CONDUCT

This Policy is effective for incidents occurring on or after August 14, 2020.

Authority:	Issued by the Chancellor. Changes or exceptions to administrative policies issued by the Chancellor may only be made by the Chancellor.
Category:	University-Wide
Applies to:	<ul style="list-style-type: none"> ● Administrators ● Faculty ● Staff ● Students
History:	<ul style="list-style-type: none"> Revised – August 9, 2022 Revised – August 14, 2020 Revised – August 21, 2017 Revised – August 9, 2016 Revised – October 13, 2015 Revised – September 16, 2015 Revised – September 1, 2015 Revised – May 1, 2013 Approved – August 8, 2012
Related Policies/ Regulations/Statutes	<ul style="list-style-type: none"> ● Title IX ● Policy Statement on Non-Discrimination ● Title IX Regulations [34 CFR § 106] ● Family Educational Rights and Privacy (FERPA) [20 U.S.C. § 1232g] ● Title IX, Education Amendments of 1972 [20 U.S.C. §§ 1681-1688] ● The Violence Against Women Act of 1994, as reauthorized in 2000, 2005, and 2013 ● Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act [20 U.S.C. § 1092(f)]
Contact for Information:	Title IX Coordinator - (910) 672-2325 Division of Legal, Audit, Risk and Compliance - (910) 672-1145

I. PURPOSE

The purpose of this Prohibited Sexual Conduct Policy (Policy) is to set forth the commitment of Fayetteville State University (University) to maintaining a campus environment free of sexual harassment, sexual misconduct, relationship misconduct, and retaliation and to address the University's obligations for responding to complaints of Title IX Sexual Harassment and Retaliation pursuant to the U.S. Department of Education's regulations.

This Policy also applies when the University has actual knowledge of Prohibited Sexual Conduct; the Prohibited Sexual Conduct occurred within the University's Education Programs or Activities; and the Prohibited Sexual Conduct is against a person in the United States.

II. DEFINITIONS

Complainant is defined as an individual who may have been the alleged victim of an act of Prohibited Sexual Conduct and who is participating in or attempting to participate in the University's Education Program or Activity.

Complaint Resolution Process is defined as the University's procedures for resolving Formal Complaints of Prohibited Sexual Conduct and includes the filing of a Formal Complaint, preliminary review of the Formal Complaint, investigation, hearing, any informal resolution proceedings, imposition of any sanctions and appeals.

Consent is defined as informed, freely and actively given, mutually understandable words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. In the absence of mutually understandable words or actions it is the responsibility of the initiator, that is, the person who wants to engage in the specific sexual activity, to make sure that they have consent from their partner(s). Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to do the same act, in the same way, at the same time, with each other. Consent which is obtained through the use of fraud or force, whether that force is physical force, threats, intimidation, or coercion, is ineffective consent. Intimidation or coercion is determined by reference to the reasonable perception of a person found in the same or similar circumstances.

Education Program or Activity is defined as locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the alleged Prohibited Sexual Conduct occurred.

Formal Complaint is defined as a written document filed by a Complainant with the Title IX Coordinator or signed by the Title IX Coordinator (in cases where a Complainant refuses to sign) alleging Prohibited Sexual Conduct against a Respondent and requesting that the University investigate the allegations.

Informal Resolution is defined as a variety of options for resolving a Formal Complaint which do not involve a hearing.

Office of Compliance, Equity and Risk Management is the University's unit responsible for, among other duties, investigating allegations of Prohibited Sexual Conduct.

Prohibited Sexual Conduct is defined as Relationship Misconduct, Sexual Harassment and Sexual Misconduct.

- **Relationship Misconduct** is defined as follows:
 - **Dating Violence** which is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between people involved in the relationship.

- **Domestic Violence** is defined as violence that may constitute a felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of North Carolina, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of North Carolina.
- **Stalking** is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. Allegations of Stalking are processed under this Policy only if the alleged Stalking behavior is based on sex. Non-sex-based Stalking may be addressed by other University policies.
- **Sexual Harassment** is defined as follows:
 - an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct, or
 - unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity, or
 - Sexual Misconduct or Relationship Misconduct.
- **Sexual Misconduct** is defined as any sexual act directed against another person without the Consent of the victim, including instances where the victim is incapable of giving Consent. Such misconduct includes the following:
 - **Fondling**
The touching of the private parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - **Incest**
Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Rape**
The 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 Consent of the victim.
 - **Statutory Rape**
Sexual intercourse with a person who is under the statutory age of being able to give Consent.

Report is defined as a disclosure of information by any person to the Title IX Coordinator or other University employees (as defined below) that includes allegations that may be covered by this Policy. A Report is different from a Formal Complaint.

Respondent is defined as an individual who has been accused of being the perpetrator of Prohibited Sexual Conduct.

Supportive Measures are defined as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or 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 equal access to the Education Program or Activity without unreasonably burdening the other party and include measures designed to protect the safety of all parties or the educational environment or to deter Sexual Harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties (no contact orders), changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

III. REPORTING INCIDENTS OF PROHIBITED SEXUAL CONDUCT

The University strongly encourages individuals to promptly inform the University of incidents of Prohibited Sexual Conduct. Acting promptly will significantly improve the ability of the University to conduct a full administrative investigation and enhance the effectiveness of any criminal investigation..

Individuals may make a Report to any or all of the following offices/individuals:

A. Reports to Confidential Resources

Reports shared with a **Confidential Resource** will not be disclosed, including to the University. Any individual may choose to seek support from confidential professionals on and off campus, including counselors, medical health providers, clergy, or rape crisis counselors.

The University's trained professionals designated below can provide counseling, information, and support in a confidential setting. These Confidential Resources will not share information about an individual (including whether that individual has received services) without the individual's express permission, unless there is a continuing threat of serious harm to the patient/client or to others or there is a specific obligation to reveal such information (*e.g.*, suspected abuse or neglect of a minor). These professionals are also available to help an individual make a report to the University.

Student Health Services
Phone: 910-672-1259
Location: Spaulding Building
healthservices2@uncfsu.edu

Counseling and Personal Development Center
Phone: 910-672-1222
Location: Spaulding Building
counselingservice@uncfsu.edu

B. Reports to Law Enforcement

The University encourages victims to inform law enforcement of incidents of Sexual Misconduct or Relationship Misconduct. The University's Police and Public Safety Department will help any individual get to a safe place, assist with obtaining transportation to the hospital, contact another law enforcement agency, and offer information about the University's resources and processes.

C. Reports to the Title IX Coordinator

Individuals are encouraged to report allegations of Prohibited Sexual Conduct to the Title IX Coordinator. As used in this regulation, reference to the Title IX Coordinator also includes Deputy Title IX Coordinators. To report an incident, or for questions concerning Title IX, Prohibited Sexual Conduct, or this Policy, individuals may contact the Title IX Coordinator via any of the following mechanisms:

- Office Barber Building, Room 211
- Mail 1200 Murchison Road
Fayetteville, NC 28301
- Telephone (910) 672-2325
- Email TitleIX@uncfsu.edu
- Online Report www.uncfsu.edu/title-ix

D. Other University Employees

University administrators at the level of director/department chair or above with knowledge of Prohibited Sexual Conduct shall report such incidents to the University Police (if a crime is involved) and the Title IX Coordinator. Other employees should also report their knowledge of such incidents to the Title IX Coordinator or University Police. No employee is authorized to investigate or attempt to resolve an incident.

IV. RESPONSE TO ALLEGATIONS OF PROHIBITED SEXUAL CONDUCT

The University will respond as appropriate to Reports of Prohibited Sexual Conduct whether those allegations are the subject of a Report or are submitted as a Formal Complaint. When a Formal Complaint is filed, the University will follow its *Complaint Resolution Process*.

Upon receiving a Report containing allegations of Prohibited Sexual Conduct, the Title IX Coordinator shall promptly contact the Complainant to discuss the availability of support measures, wishes with respect to supportive measures, and explain the Title IX *Complaint Resolution Process*, including the option for filing a Formal Complaint.

In addition, if a Formal Complaint is filed, either by the Complainant or the Title IX Coordinator, the University must offer supportive measures to the Respondent, and follow its *Complaint Resolution Process*. The Title IX Coordinator may need to file a formal complaint that obligates the University to initiate an investigation regardless of the complainant's relationship with the University or interest in participating in the Title IX Complaint Resolution Process. Such circumstances may include, but not be limited to when there is a pattern of behavior or there have been multiple complaints about the same Respondent.

V. EMERGENCY ACTIONS/ADMINISTRATIVE LEAVE

The University may take one or more emergency actions against a Respondent in order to safeguard the University community at any time following an allegation of Prohibited Sexual Conduct. The University shall undertake an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifying removal from campus. Should a recommendation for removal be made, the Respondent will be removed and provided with written notice and an opportunity to challenge the decision immediately following the removal.

Additionally, if the Respondent is a student, the University shall follow the interim suspension procedures outlined in the Code of Student Conduct when issuing an emergency action.

Nothing shall preclude a University official from placing a Respondent employee on administrative leave in accordance with the applicable employment policy.

VI. RETALIATION

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured under this 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. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, constitutes retaliation.

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

Charging an individual with a University policy violation for making a materially false statement in bad faith does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any part made a materially false statement in bad faith.

VII. AMNESTY

The University will consider granting amnesty by not filing charges against a student Complainant who may have violated the University's prohibition against visitation, having alcohol and drugs on campus, or under-age drinking at the same time of the incident when the Complainant became a victim.

VIII. FALSE CLAIMS

An individual who knowingly makes materially false allegations or who knowingly provides materially false information in an investigation or proceeding, shall be subject to disciplinary action, up to and including dismissal, expulsion, or discharge.

IX. RECORDS

The University shall maintain for a period of seven (7) years all such records pertaining to the following:

- Prohibited Sexual Conduct investigation documents;
- determination of responsibility;
- hearing recordings or transcripts;
- disciplinary actions or sanctions imposed on the Respondent;
- remedies provided to the Complainant;
- appeals and appellate decisions;
- informal resolutions and their results;
- actions taken in response to a Report or Formal Complaint (including any Supportive Measures); and

- materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

X. RELATIONSHIP TO OTHER LAWS AND POLICIES

- A. Nothing in this Policy is intended to restrict any rights that would otherwise be protected from government action by the First Amendment of the United States Constitution; or deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution; or restrict any other rights guaranteed against government action by the United States Constitution.
- B. Reports of discrimination or harassment on the basis of sex or of a sexual nature that do not meet the definition of Prohibited Sexual Conduct in this Policy may be prohibited by other policies, including but not limited to, the University's Unlawful Discrimination, Harassment and Retaliation policy.
- C. Nothing in this Policy may be read in derogation of any person's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq* or any regulations promulgated thereunder.