

Sexual Misconduct Policy

Introduction

Members of the University community, guests and visitors have the right to be free from sexual violence. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University believes in a zero tolerance policy for gender-based misconduct. When an allegation of misconduct is brought to an appropriate administration's attention, and a respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

Overview of Policy Expectations With Respect To Physical Sexual Misconduct

The expectations of our community regarding sexual misconduct can be summarized as follows:

- In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity
- Consent is sexual permission; Consent can be given by word or action, but nonverbal consent is not as clear as talking about what you want sexually and what you don't; Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity
- Silence – without actions demonstrating permission – cannot be assumed to show consent

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

Overview of Policy Expectations With Respect to Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcomed may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks.

The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. For the personal protection of members of this community, relationships in which power differentials are inherent (*faculty-student, staff-student, administrator-student*) are generally discouraged. Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and

students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

Sexual Violence: Risk-Reduction Tips

Risk-reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk of experiencing a nonconsensual sexual act. **Below are some suggestions to avoid committing a nonconsensual sexual act; be mindful:**

- If you have limits, make them known as early as possible
- Tell a sexual aggressor “NO” clearly and firmly
- Try to remove yourself from the physical presence of a sexual aggressor
- Find someone nearby and ask for help
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give him or her a chance to clearly relate his or her intentions to you. Understand and respect personal boundaries
- DON'T MAKE ASSUMPTIONS about consent, about someone's sexual availability, about whether he or she is attracted to you, about how far you can go, or about whether he or she is physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading your partner. Your partner may not have figured out how far he or she wants to go with you yet. You must respect the timeline for sexual behaviors with which your partner is comfortable

- Don't take advantage of someone's drunkenness or drugged state, even if he or she did it to him- or herself
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully; pay attention to verbal and nonverbal communication and body language

The University reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students' rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from the campus pending a hearing and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the University reserves the right to impose different sanctions, ranging from verbal warning to expulsion – depending on the severity of the offense. The University will consider the concerns and rights of both the complainant and the person accused of sexual misconduct.

Sexual Misconduct offenses include, but are not limited to:

- Sexual harassment
- Nonconsensual sexual contact (or attempts to commit same)
- Nonconsensual sexual intercourse (or attempts to commit same)
- Sexual exploitation

Sexual Harassment

Sexual harassment is:

- Unwelcomed, gender-based verbal or physical conduct that is,
- Sufficiently severe, pervasive and objectively offensive that it,
- Unreasonably interferes with, limits or deprives someone of the ability to participate in or benefit from the University's educational program and/or activities, and is
- Based on power differentials (*quid pro quo*), the creation of a hostile environment, or retaliation

Examples include: *an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual-based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence; stalking; and gender-based bullying.*

Nonconsensual Sexual Contact

Nonconsensual sexual contact is:

- Any intentional sexual touching,
- However slight,
- With any object,
- By a man or a woman upon a man or a woman,
- That is without consent and/or by force

Sexual contact includes:

- Intentional contact with the breasts, buttock, groin or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, etc.

Nonconsensual Sexual Intercourse

Nonconsensual sexual intercourse is:

- Any sexual intercourse,
- However slight,
- With any object,
- By a man or woman upon a man or a woman,
- That is without consent and/or by force

Intercourse includes:

- Vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth-to-genital contact or genital-to-mouth contact), no matter how slight the penetration or contact

Sexual Exploitation

Occurs when a student takes nonconsensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy
- Prostituting another student
- Nonconsensual video- or audio-taping of sexual activity
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex)
- Engaging in voyeurism
- Knowingly transmitting an STI or HIV to another student
- Exposing one's genitals in nonconsensual circumstances; inducing another to expose their genitals
- Sexually based stalking and/or bullying may also be forms of sexual exploitation

Additional Applicable Definitions

1. **Consent:** Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in – and the conditions of – sexual activity.
 - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity
 - Previous relationships or prior consent cannot imply consent to future sexual acts
2. **Force:** the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent (“Have sex with me or I’ll hit you. Okay, don’t hit me; I’ll do what you want.”).
 - Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, 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

- There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of nonconsent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition nonconsensual, but nonconsensual sexual activity is not by definition forced
- In order to give effective consent, one must be of legal age
- Sexual activity with someone one should know to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy
- Incapacitation is a state where someone cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of the sexual interaction)
- This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc., is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>

Note: Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy. The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy. For reference to the pertinent state statutes on sex offenses, please see the New Jersey State Police website at www.state.nj.us/njsp.

Sanction Statement

1. Any student found responsible for violating the policy on Nonconsensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.
2. Any student found responsible for violating the policy on Nonconsensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.
3. Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to

expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.

4. The conduct officer reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor conduct officers will deviate from the range of recommended sanctions unless compelling justification exists to do so.

Examples

1. 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 p.m. until 3 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand-to-genital contact). Amanda would never have done it but for Bill’s incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn’t want it, she could have left. Bill is responsible for violating the University Nonconsensual or Forced Sexual Contact policy. It is likely that a University Hearing Officer would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not effective when forced. Sex without effective consent is sexual misconduct.
2. Jiang is a junior at Kean University. Beth is a sophomore. Jiang comes to Beth’s dorm 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 and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, 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. Is this a policy violation? **Jiang would be held responsible in this scenario for Nonconsensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent**

to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or nonverbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.

3. Kevin and Amy are at a party. Kevin is not sure how much Amy has been drinking, but he is pretty sure it's a lot. After the party, he walks Amy to her room, and Amy comes on to Kevin, initiating sexual activity. Kevin asks her if she is really up to this, and Amy says yes. Clothes go flying, and they end up in Amy's bed. Suddenly, Amy runs for the bathroom. When she returns, her face is pale, and Kevin thinks she may have thrown up. Amy 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 Amy seems pretty groggy and passive, and he thinks Amy may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into Amy the next day, he thanks her for the wild night. Amy remembers nothing and decides to make a complaint to the Dean. **This is a violation of the Nonconsensual Sexual Intercourse Policy. Kevin should have known that Amy was incapable of making a rational, reasonable decision about sex. Even if Amy seemed to consent, Kevin was well aware that Amy had consumed a large amount of alcohol, and Kevin thought Amy was physically ill, and that she passed out during sex. Kevin should be held accountable for taking advantage of Amy in her condition. This is not the level of respectful conduct expected of students.**

Other Misconduct Offenses (Will Fall Under Title IX When Gender-Based)

- Threatening or causing physical harm, extreme verbal abuse, or other conduct that threatens or endangers the health or safety of any person
- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation,

pledging, joining or any other group-affiliation activity (as defined further in the Hazing Policy)

- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment). Violence between those in an intimate relationship to each other
- Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community

Confidentiality, Privacy and Reporting

Institutions must clearly articulate who are “responsible employees” under Title IX for purposes of initiating notice and/or investigation, and those who have more discretion on how they act in response to notice of gender-based discrimination. Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles at the University and upon University policy. When consulting campus resources, all parties should be aware of confidentiality, privacy and mandatory reporting in order to make informed choices.

On campus, some resources can offer you confidentiality, sharing opinions and advice without any obligation to tell anyone unless you want to. Other resources are expressly there for you to report crimes and policy violations, and they will take action when you report your victimization to them. Most resources on campus fall in the middle of these two extremes. Neither the University nor the law requires them to divulge private information that is shared with them except in certain circumstances, some of which are described below. A victim may seek assistance from these University officials without starting a formal process that is beyond the victim’s control, or violates his or her privacy.

To Report Confidentially

If one desires that details of the incident be kept confidential, they should speak with on-campus mental health counselors, campus health service providers or off-campus rape crisis resources who can maintain confidentiality. Campus counselors are available to help

you free of charge and can be seen on an emergency basis. In addition, you may speak on and off campus with members of the clergy and chaplains, who will also keep reports made to them confidential.

Reporting to Those Who Can Maintain the Privacy of What You Share

You can seek advice from certain resources that are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These are individuals who the University has not specifically designated as “responsible employees” for purposes of putting the institution on notice and for whom mandatory reporting is required, other than in the stated limited circumstances. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct, such as RAs, faculty members, advisors to student organizations, career services staff, admissions officers, student activities personnel and many others. If you are unsure of someone’s duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can help you best.

Some of these resources, such as RAs, should be instructed to share incident reports with their supervisors, but they will not share any personally identifiable information about your report unless you give permission, except in the rare event that the incident reveals a need to protect you or other members of the community. If your personally identifiable information is shared, it will only be shared as necessary with as few people as possible, and all efforts will be made to protect your privacy.

Nonconfidential Reporting Options

You are encouraged to speak to officials of the institution to make formal reports of incidents (*deans, vice presidents, or other administrators with supervisory responsibilities, campus security and human resources*). The University considers these people to be “responsible employees.” A notice, to them, is an official notice to the institution. You have the right and can expect to have incidents of sexual misconduct to be taken seriously by the institution when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary with investigators, witnesses and the accused individual.

Federal Statistical Reporting Obligations

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student affairs, student conduct, campus law enforcement, local police, coaches, athletic directors, 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. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware University administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

If you are sexually assaulted:

- Get to a safe place and, if possible, contact someone you trust so that you are not alone
- Do NOT wash or douche. Valuable evidence could be destroyed
- Do NOT remove clothing. It will later be collected as evidence. Undergarments are especially significant
- Kean University strongly encourages ALL victims of sexual assault to report the incident to University police immediately, or as soon as possible following the assault
- The University Police Department is available 24 hours a day, seven days a week to provide assistance to victims of sexual assault. Students may go to the department on the first floor at Downs Hall or call (908) 737-4840. Counseling referrals and medical attention are given priority along with a thorough investigation of the complaint

- The Union County Rape Crisis Center may be contacted to assist during the investigation and medical procedures. Please call the center at (908) 233-7273; it has a 24-hour hotline. The center is located at 300 North Avenue East, Westfield, NJ 07090
- Students of Kean are also encouraged to contact the Kean Counseling Center (KCC) for personal support and short-term counseling. The center is located in Downs Hall, Room 127; or call (908) 737-4850
- Know that you need not answer questions from people not associated with the investigation

The Kean Counseling Center is the primary campus resource for members of the University community for information, educational programs, crisis intervention, short-term counseling and referral services regarding issues of sexual assault.

Each year programs are presented to increase awareness of the realities of sexual violence and the problems created by it. Topics have included: sexual harassment, date/acquaintance rape and incest/childhood sexual abuse. All members of the University community are encouraged to attend these events.

Sexual Misconduct Grievance Process

Definitions

- **Sexual Harassment:** Unwelcome, gender-based verbal or physical conduct that is sufficiently severe, pervasive and objectively offensive so that it unreasonably interferes with, limits or deprives someone of the ability to participate in or benefit from the University's educational program. The unwelcome behavior may be based on power differentials (*quid pro quo*), the creation of a hostile environment or retaliation. Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwanted sexual attention; to punish a refusal to comply; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; and gender-based bullying
- **Discrimination:** Any distinction, preference, advantage for or detriment to an individual compared to others – that is based upon an individual's actual or perceived gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion or sexual orientation – that is sufficiently serious that it

interferes with or limits a student's ability to participate in or benefit from the University's educational program or activities

- **Discriminatory Harassment:** Detrimental action based on an individual's actual or perceived gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation or other protected status that is so severe, pervasive and objectively offensive that it interferes with or limits a student's ability to participate in, or benefit from, the University's educational program or activities
- **Retaliatory Harassment:** Intentional action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, that harms an individual as reprisal for filing or participating in a sexual misconduct grievance proceeding

Sexual Harassment of a Faculty/Staff Member by a Student

Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature directed toward a faculty/staff member by a student that is so severe, pervasive and objectively offensive that it substantially interferes with employment or living conditions or deprives the individual of employment access or benefits.

Sexual Harassment of a Student by a Faculty/Staff Member

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a faculty or staff member toward a student are held to constitute sexual harassment when:

- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating an individual's educational development or performance; or
- Such conduct is so severe, pervasive and objectively offensive that it interferes with or limits a student's ability to participate in or benefit from the University's educational program and activities

While a particular interaction must be offensive to both a reasonable person and to the victim to be defined as harassment, faculty and staff members and other persons of authority should be sensitive to questions about mutuality of consent that may be raised, and to the conflict of interests that are inherent in personal relationships that result from professional and educational interactions. Harassment is particularly damaging when it exploits the educational dependence and trust between students and faculty/staff. When the authority and power inherent in faculty/staff relationships with students, whether

overtly, implicitly or through misinterpretation, are abused in any way, there is potentially great damage to the individual student, to the accused individual and to the climate of the institution.

Complaints Concerning Discrimination and/or Harassment

The University does not permit discrimination or harassment in our programs and activities on the basis of race, color, national origin, sex, gender identity, sexual orientation, disability, age, religion, or any other characteristic protected by institutional policy or state, local or federal law. Students who believe they have been subjected to discrimination or harassment in violation of this policy should follow the procedure outlined in this Code to report these concerns.

This process involves an immediate initial investigation to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the University will initiate a prompt, thorough and impartial investigation. This investigation is designed to provide a fair and reliable determination about whether the University nondiscrimination policy has been violated. If so, the University will implement a prompt and effective remedy designed to end the discrimination, prevent its recurrence and address its effects.

Students who wish to report a concern or complaint relating to discrimination or harassment may do so by reporting the concern to the University Title IX Coordinator:

Dr. Charlie Williams, Director

Affirmative Action Programs

Townsend Hall, Room 133

(908) 737-3330

Individuals with complaints of this nature always have the right to file a formal complaint with the U.S. Department of Education:

Office for Civil Rights (OCR)

400 Maryland Avenue, SW

Washington, DC 20202-1100

Customer Service Hotline #: (800) 421-3481

Fax: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

Formal and Informal Grievance Procedure for Student Complaints

This procedure is intended to apply to student grievances against employees, employee civil rights grievances against students, and student-on-student civil rights grievances. All other grievances by students against students or employees against students will be addressed through the student conduct procedures located elsewhere in this Code.

The University community benefits from formal and informal procedures that encourage prompt resolution of complaints and concerns that students may have about the implementation of policies and procedures that govern the institution.

Informal Dispute Resolution Efforts: A Useful First Step Before Filing Formal Complaints

Before pursuing the formal complaint process, every reasonable effort should be made to constructively resolve issues with faculty, staff or administrators, including following procedures for formal appeal. Whenever possible and safe, the problem or complaint should first be discussed with the individual involved in the complaint. If satisfactory resolution is not reached after discussion with the individual, the student should contact the individual's direct supervisor to attempt to resolve the complaint. If these efforts are unsuccessful, the formal complaint process may be initiated. The University does not require a student to contact the person involved or that person's supervisor if doing so is impracticable, or if the student believes that the conduct cannot be effectively addressed through informal means.

Formal Grievance Process

The Office of Community Standards and Student Conduct is designated to formally investigate student grievances, address inquiries and coordinate the University's compliance efforts regarding student complaints and grievances. Notice of a formal

complaint can be made in person or orally to an appropriate official, but the University strongly encourages submission of grievances – in writing, by email attachment as an MS Word or PDF document – to Dr. Charlie Williams, Director, Affirmative Action Programs.

The grievance should clearly and concisely describe the alleged incident(s), when and where it occurred, and the desired remedy sought. The grievance should be signed by the initiator or, in the case of an email submission, sent as an email attachment, in letter format and should contain the name and all contact information for the grievant. Any supporting documentation and evidence should be referenced within the body of the formal grievance. Additionally, the initiator of a formal grievance should submit any supporting materials in writing as quickly as is practicable.

The grievant's supporting documentation should clearly demonstrate all informal efforts, if any, to resolve the issue(s) with the person involved and the person's supervisor. This includes names, dates and times of attempted or actual contact along with a description of the discussion and the manner of communication made in the course of each effort. If contacting the person involved and/or the supervisor is impracticable, the grievant should state the reasons why.

Upon receipt of a grievance, the Office of Community Standards and Student Conduct will open a formal case file and assign a Hearing Officer who will direct the investigation and confer with the Title IX Coordinator on interim action, accommodations for the alleged victim, or other necessary remedial short-term actions. **The officer will then take the following steps:**

- In coordination with the campus Title IX Coordinator, initiate any necessary remedial actions
- Determine the identity and contact information of the complainant (whether that be the initiator, the alleged victim, or a University proxy or representative)
- Identify the correct policies allegedly violated
- Conduct an immediate initial investigation to determine if there is reasonable cause to charge the accused individual, and what policy violations should be alleged as part of the complaint; if there is insufficient evidence to support reasonable cause, the grievance should be closed with no further action
- Meet with the complainant to finalize the complaint and
- Prepare the notice of charges on the basis of the initial investigation
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended time frame, and order of

interviews for all witnesses and the accused individual, who may be given notice prior to or at the time of the interview

- Complete the investigation promptly, and without unreasonable deviation from the intended timeline
- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not)
- Present the findings to the accused individual, who may accept the findings, accept the findings in part and reject them in part, or reject all findings
- Share the findings and update the complainant on the status of the investigation and the outcome

Where the accused individual is found not responsible for the alleged violation(s), the investigation should be closed. Where the accused individual accepts the finding that he or she violated University policy, the Office of Community Standards and Student Conduct will impose appropriate sanctions for the violation, after consultation with the Title IX Coordinator. The University will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the University community.

In the event that the accused individual rejects the findings in part or entirely, the Office of Community Standards and Student Conduct will convene a hearing under its respective procedures to determine whether the accused individual is in violation of the contested aspects of the complaint. At the hearing, the findings of the investigation will be admitted, but they are not binding on the decider(s) of fact. The Hearing Officer(s) may give evidence. The hearing will determine whether it is more likely than not that the accused individual violated the policies forming the basis of the charge. The goal of the hearing is to provide an equitable resolution via an equitable process while respecting the civil and legal rights of all participants.

The Office of Community Standards and Student Conduct has final decision-making authority with regard to formal complaints, subject to appeal. Where an accused individual is found in violation, the Office of Community Standards and Student Conduct will impose appropriate sanctions for the violation, after consultation with the Title IX Coordinator. The University will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the University community. Appeal proceedings as described in this Code will apply to all parties to the complaint.

Elaboration on Student Participation in the Grievance Process

The Hearing Officer from the Office of Community Standards and Student Conduct will contact or request a meeting with the initiator of the formal grievance, and the complainant (if different people). The investigator also may contact or request a meeting with relevant University staff, students or others as part of the investigation. The complainant may request to meet and discuss the allegations of the grievance with the Hearing Officers and may offer any documentation, witnesses or other materials in support of the complaint.

The complainant has the option to have an advocate during a meeting with the Hearing Officer to discuss the documentation submitted by the student in support of the grievance.

Such an advocate should be a member of the University community: student, faculty member, academic advisor or staff member, unless leave is given by the Office of Community Standards and Student Conduct upon request for an advocate from outside the University community. The complainant must advise the hearing officer of the identity of an advocate or witness at least two (2) business days before the date of the meeting with the Hearing Officer. During a meeting with the Hearing Officer, an attorney acting as a lawyer may not serve as the student's advocate or formally represent the student. These procedures are entirely administrative in nature and are not considered legal proceedings. No audio or video recording of any kind other than as required by institutional procedure is permitted, nor is formal legal representation allowed. At the Hearing Officer's discretion, the Hearing Officer may remove anyone disrupting the meeting from the discussion. All these same opportunities and privileges extend to all parties to the complaint.

Time Frame and Grounds for Filing an Appeal Request

In the event that an accused individual accepts the findings of the investigation, those findings cannot be appealed. Sanctions imposed by the Office of Community Standards and Student Conduct post-investigation can be appealed by any party according to the grounds, below. Post-hearing, any party may appeal the findings and/or sanctions only under the grounds certain grounds. All sanctions imposed by the original Hearing Officer will be in effect during the appeal. A request may be made to the Director of Community Standards and Student Conduct for special consideration in exigent circumstances, but the presumptive stance of the institution is that the sanctions will stand. Graduation, study abroad, internships/externships, etc. do NOT, in and of themselves, constitute exigent circumstances, and students may not be able to participate in those activities during their

appeal. In cases where the appeal results in reinstatement to the institution or of privileges: all reasonable attempts will be made to restore the student to their prior status — recognizing that some opportunities lost may be irretrievable in the short term.

The decision of the Office of Community Standards and Student Conduct may be appealed by petitioning the Vice President for Student Affairs. Accused students or complainants must petition within three to five business days of receiving the written decision for a review of the decision or the sanctions imposed. Any party who files an appeal must do so in writing to the Office of Community Standards and Student Conduct. The Office of Community Standards and Student Conduct will share the appeal with the other party (e.g., if the accused student appeals, the appeal is shared with the complainant, who may also wish to file a response), and then the Office of Community Standards and Student Conduct will draft a response memorandum (also shared with all parties). All appeals and responses are then forwarded to the Vice President for Student Affairs for initial review to determine if the appeal meets the limited grounds and is timely. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the decision is final. If the appeal has standing, the documentation is forwarded for consideration. The party requesting appeal must show error as the original finding and sanction are presumed to have been decided reasonably and appropriately. The ONLY grounds for appeal are as follows:

1. A procedural [or substantive] error occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures, etc.);
2. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
3. The sanctions imposed are substantially disproportionate to the severity of the violation.

If the appeals officer determines that new evidence should be considered, it will return the complaint to the original Hearing Officer to reconsider in light of the new evidence, only. The reconsideration of the Hearing Officer is not appealable. If the appeals officer determines that a material procedural [or substantive] error occurred, it may return the complaint to the original Hearing Officer with instructions to reconvene to cure the error. In rare cases, where the procedural [or substantive] error cannot be cured by the original Hearing Officer (as in cases of bias), the appeals officer may order a new hearing on the complaint with a new hearing officer. The results of a reconvened hearing cannot be appealed. The results of a

new hearing can be appealed, once, on the four applicable grounds for appeals. If the appeals officer determines that the sanctions imposed are disproportionate to the severity of the violation, the appeals officer will return the complaint to the Office of Community Standards and Student Conduct, which may then increase, decrease or otherwise modify the sanctions; this decision is final.

The procedures governing the hearing of appeals include the following:

- All parties should be informed of the status of the requests for the appeal, the status of the appeal consideration and the results of the appeal decision
- Every opportunity to return the appeal to the original hearing officer for reconsideration (remand) should be pursued
- Appeals are not intended to be full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal
- This is not an opportunity for appeals officers to substitute their judgment for that of the original hearing officer merely because they disagree with its finding and/or sanctions. Appeal decisions are to be deferential to the original Hearing Officer – making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so
- Sanctions imposed are implemented immediately unless the Director of Community Standards and Student Conduct stays their implementation in extraordinary circumstances, pending the outcome of the appeal
- The Appeals Officer will render a written decision on the appeal to all parties within seven (7) business days* from hearing of the appeal. The Appeals Officer's decision to deny appeal requests is final

Special Grievance Process Provisions

1. **Attempted violations:** In most circumstances, the University will treat attempts to commit any of the violations listed in the Student Code of Conduct as if those attempts had been completed.
2. **University as Complainant:** As necessary, the University reserves the right to initiate a complaint, to serve as complainant and to initiate conduct proceedings without a formal complaint by the victim of misconduct.
3. **False Reports:** The University will not tolerate intentional false reporting of incidents. It is a violation of the Student Code of Conduct to make an intentionally false report of any

policy violation, and it may also violate state criminal statutes and civil defamation laws.

4. **Immunity for Victims and Witnesses:** The University community encourages the reporting of Code of Conduct violations and crimes by victims and witnesses. The University community encourages the reporting of Code of Conduct violations, especially sexual misconduct. Sometimes, victims or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many victims as possible choose to report to University officials, and that witnesses come forward to share what they know. To encourage reporting, the University pursues a policy of offering victims of sexual misconduct and witnesses limited immunity from being charged for policy violations related to the sexual misconduct incident. While violations cannot be completely overlooked, the University will provide educational rather than punitive responses, in such cases.
5. **Bystander Engagement:** The welfare of students in our community is of paramount importance. At times, students on and off campus may need assistance. The University encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Campus Police). The University pursues a policy of limited immunity for students who offer help to others in need. While policy violations cannot be overlooked, the University will provide educational options, rather than punishment, to those who offer their assistance to others in need.
6. **Parental Notification:** The University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The University may also notify parents/guardians of nondependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is nondependent, the University will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The University also reserves the right to designate which University officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act.
7. **Notification of Outcomes:** The outcome of a campus hearing is part of the educational record of the accused student, and is protected from release under a federal law, FERPA. **However, the University observes the legal exceptions as follows:**

- Complainants in nonconsensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking and relationship violence incidents have an absolute right to be informed of the outcome, essential findings and sanctions of the hearing – **in writing** – without condition or limitation
 - The University may publicly release the name, nature of the violation and the sanction for any student who is found in violation of a University policy that is a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. The University will release this information to the complainant in any of these offenses regardless of the outcome
8. **Alternative Testimony Options:** For sexual misconduct complaints, and other complaints of a sensitive nature, whether the alleged victim is serving as the complainant or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged victim to testify outside the physical presence of the accused individual, such as by Skype. While these options are intended to help make the alleged victim more comfortable, they are not intended to work to the disadvantage of the accused student.
9. **Past Sexual History/Character:** The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the Hearing Officer. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request, and must be reviewed in advance of the hearing by the Director of Community Standards and Student Conduct. While previous conduct violations by the accused student are not generally admissible as information about the present alleged violation, the Director of Community Standards and Student Conduct may supply previous complaint information to the investigator or may consider it him- or herself if he or she is hearing the complaint, only if:
- The accused was previously found to be responsible; the previous incident was substantially similar to the present allegation
 - Information indicates a pattern of behavior and substantial conformity with that pattern by the accused student

Statement of the Rights of the Alleged Victim

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to University administrators

- The right to be treated with respect by University officials
- The right of both accuser and accused to have the same opportunity to have others present (in support or advisory roles) during a campus conduct hearing
- The right not to be discouraged by University officials from reporting an assault to both on-campus and off-campus authorities
- The right to be informed of the outcome and sanction of any conduct hearing involving sexual assault, usually within 24 hours of the end of the conduct hearing
- The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire
- The right to be notified of available counseling, mental health or student services for victims of sexual assault, both on campus and in the community
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the victim and if such changes are reasonably available (no formal complaint, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
 1. Change of an on-campus student's housing to a different on-campus location;
 2. Assistance from University support staff in completing the relocation;
 3. Arranging to terminate a housing contract and pro-rating a refund;
 4. Exam (paper, assignment) rescheduling;
 5. Taking an incomplete in a class;
 6. Transferring class sections;
 7. Temporary withdrawal;
 8. Alternative course completion options.
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing
- The right not to have any complaint of sexual misconduct mediated (as opposed to adjudicated)
- The right to make a victim-impact statement at the campus conduct proceeding and to have that statement considered by the hearing officer in determining its sanction
- The right to a campus no contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others

- The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus law enforcement
- The right to appeal the [finding and] sanction of the conduct officer, in accordance with the standards for appeal established by the institution
- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness's identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed)
- The right to preservation of privacy, to the extent possible and allowed by law
- The right to a hearing closed to the public
- The right to petition that any conduct officer be removed on the basis of demonstrated bias
- The right to bring a victim advocate or advisor to all phases of the investigation and campus conduct proceeding
- The right to give testimony in a campus hearing by means other than being in the same room with the accused student
- The right to ask the investigator to identify and question relevant witnesses, including expert witnesses
- The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint
- The right to have the University compel the presence of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, directly or indirectly, of witnesses (including the accused student), and the right to challenge documentary evidence
- The right to be present for all testimony given and evidence presented before the conduct officer
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct training
- The right to have University policies and procedures followed without material deviation
- The right to be informed in advance of any public release of information regarding the complaint
- The right not to have released to the public any personally identifiable information about the complainant, without his or her consent

Statement of the Accused Student's Rights

The rights of accused students should also be prominently indicated, such as:

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to University administrators against the accused student
- The right to be treated with respect by University officials
- The right to be informed of and have access to campus resources for medical, counseling and advisory services
- The right to be fully informed of the nature, rules and procedures of the campus conduct process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions
- The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing
- The right to make an impact statement at the campus conduct proceeding and to have that statement considered by the hearing officer in determining its sanction
- The right to appeal the [finding and] sanction of the hearing officer, in accordance with the standards for appeal established by the institution
- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness's identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed)
- The right to a hearing closed to the public
- The right to petition that the conduct officer be removed on the basis of bias
- The right to have the University compel the presence of student, faculty and staff witnesses, and the opportunity to ask questions, directly or indirectly, of witnesses, and the right to challenge documentary evidence
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct adjudication training
- The right to have University policies and procedures followed without material deviation
- The right to have an advisor or advocate to accompany and assist in the campus hearing process. This advisor can be anyone, including an attorney (provided at the accused

student's own cost), but the advisor may not take part directly in the hearing itself, though he or she may communicate with the accused student as necessary

- The right to a fundamentally fair hearing, as defined in these procedures
- The right to a campus conduct outcome based solely on evidence presented during the conduct process. Such evidence shall be credible, relevant, based in fact and without prejudice
- The right to written notice of the outcome and sanction of the hearing
- The right to be informed in advance, when possible, of any public release of information regarding the complaint

Policies

Division of Student Affairs

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Contact

Directory

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