

SEXUAL HARASSMENT PREVENTION

1. POLICY

- a. Consistent with Wake Forest University’s notice of non-discrimination, the University is committed to maintaining an educational and working environment free from sexual harassment. Accordingly, sexual harassment by faculty, staff, students or third parties occurring in a University educational program or activity, on or off campus, is prohibited and constitutes a violation of this Policy.
- b. This policy applies to any allegation of Sexual Harassment (as defined herein) made against an employee of the University or a third party, regardless of where the alleged Sexual Harassment occurred if the conduct giving rise to the complaint is related to the University’s academic, educational, athletic, or extracurricular programs or activities. The University’s disciplinary authority, however, may not extend to third parties who are not employees of the University. Additionally, although there is no geographical limitation to invoking this Policy, Sexual Harassment that is alleged to have occurred at a significant distance from the University and/or outside of University property may be more difficult for the University to investigate.
- c.
 - (1) In accordance with the University’s policy regarding consensual relationships, an employee is prohibited from establishing a new consensual relationship with an undergraduate student.
 - (2) A faculty member is prohibited from establishing a new consensual relationship with a graduate student in the faculty member’s school, department, or unit. In addition, a faculty member with teaching or supervisory responsibility for a graduate student is prohibited from establishing a new consensual relationship with any graduate student that faculty member is teaching or supervising.
 - (3) A graduate student with teaching or other supervisory responsibility for students is prohibited from establishing a new consensual relationship with any student that the graduate student is teaching or supervising.
 - (4) A consensual relationship is defined as a voluntary dating, sexual or romantic relationship.
 - (5) Violations of this prohibition will be addressed in accordance with the policy regarding consensual relationships [insert cross-reference to policy once it is revised and can be identified].
- d. Persons found to be in violation of this policy will be subject to disciplinary action which may include, but is not limited to, written warning, demotion, transfer, suspension, expulsion, dismissal, or termination of employment or University contractual relationship.
- e. Retaliation against an individual who complains in good faith of sexual harassment under this policy is prohibited. In addition, intentionally making a false accusation of sexual harassment is also prohibited. Conduct of either nature will be addressed in accordance with the University’s Whistleblower-Non-Retaliation Policy.

Comment [mdg1]: Cross reference to the University’s policy?

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- f. In the case of allegations of Sexual Harassment by University employees or third parties, this Policy supersedes all other procedures and policies that may be set forth in other University documents.
- g. Complaints of Sexual Harassment by students of Wake Forest should be reported, and will be addressed, in accordance with the University's Student Sexual Misconduct Policy.

2. DEFINITIONS OF SEXUAL HARASSMENT

- a. Sexual harassment is a form of discrimination that includes verbal, written, or physical behavior of a sexual nature, directed at someone, or against a particular group, because of that person's or group's sex, or based on gender stereotypes, when that behavior is unwelcome and meets either of the following criteria:
 - (1) Submission or consent to the behavior is reasonably believed to carry consequences for the individual's education, employment, on-campus living environment, or participation in a University activity. Examples of this type of sexual harassment include:
 - (a) pressuring an individual to engage in sexual behavior for some educational or employment benefit, or (b) making a real or perceived threat that rejecting sexual behavior will carry a negative consequence for the individual.
 - (2) The behavior has the purpose or effect of substantially interfering with the individual's work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education, on-campus living, or participation in a University activity. Examples of this type of sexual harassment can include:
 - (a) persistent unwelcome efforts to develop a romantic or sexual relationship;
 - (b) unwelcome sexual advances or requests for sexual favors;
 - (c) unwelcome commentary about an individual's body or sexual activities;
 - (d) repeated and unwelcome sexually-oriented teasing, joking, or flirting; and
 - (e) verbal abuse of a sexual nature.

Comments or communications may be verbal, written, or electronic. Behavior does not need to be directed at or to a specific individual in order to constitute sexual harassment, but may consist of generalized unwelcome and inappropriate comments based on sex or gender stereotypes. Determination of whether alleged conduct constitutes sexual harassment requires consideration of all the circumstances, including the context in which the alleged incidents occurred.
- b. Sexual intimidation involves:
 - (1) threatening to commit a sexual act upon another person;
 - (2) stalking;
 - (3) cyber-stalking, or
 - (4) engaging in indecent exposure

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- c. Sexual misconduct is defined as any act of a sexual nature perpetrated against an individual without effective consent, as defined in this Policy, or when an individual is unable to freely give consent. Sexual misconduct includes, but is not limited to:
- (1) Attempted or completed intercourse or penetration (anal, oral or vaginal), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective consent. This 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).
 - (2) Sexual touching (including disrobing or exposure), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective consent. Sexual touching includes any contact with the breasts, buttocks, 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, when such touching would be reasonably and objectively offensive.
 - (3) Sexual exploitation, defined as taking non-consensual, unjust or abusive sexual advantage of another, for one's own advantage or benefit; or to benefit or advantage anyone other than the one being exploited. Sexual exploitation encompasses a wide range of behaviors which may include, but are not limited to:
 - Inducing incapacitation with the intent to rape or sexually assault another;
 - Non-consensual video or audio-recording of sexual activity;
 - Allowing others to observe a personal act of consensual sex without knowledge or consent of the partner;
 - Engaging in Peeping Tommerly (voyeurism);
 - Knowingly transmitting a sexually transmitted disease, including HIV, to another ;
 - Prostituting another (i.e. – personally gaining money, privilege, or power from the sexual activities of another).
- d. Sexual harassment, sexual intimidation and sexual misconduct are all forms of Sexual Harassment prohibited by this Policy, and are referred to generally throughout this Policy as Sexual Harassment.
- e. The University's definition of sexual harassment mandates that each participant obtains and gives effective consent in each instance of sexual activity. Effective consent is informed, mutually understandable words or actions (freely and actively given), 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. Relying solely upon non-verbal communication can lead to miscommunication. It is important not to make assumptions. If confusion or ambiguity on the issue of consent arises anytime during the sexual

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interaction, the initiator should stop and verbally clarify the other individual's willingness to continue.

- Consent may not be inferred from silence, passivity or lack of active resistance.
- A current or previous dating or sexual relationship (or the existence of such a relationship with anyone else) may not, in itself, be taken to imply consent.
- Consent cannot be implied by attire, or inferred from the buying of dinner or the spending of money on a date.
- Consent to one type of sexual act may not, in itself, be taken to imply consent to another type of sexual act.
- Consent expires. Consent lasts for a reasonable time, depending on the circumstances.
- Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly; upon clear communication, all sexual activity must cease.
- 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.
- Effective consent may never be given by:
 - o Minors (under the age of 16 in North Carolina)
 - o Mentally disabled persons
 - o Persons who are incapacitated as a result of alcohol or other drugs or who are unconscious or otherwise physically helpless. Incapacitation means being in a state where a person lacks the capacity to appreciate the nature of giving consent to participate in sexual activity.
- One may not engage in sexual activity with another who one knows, or should reasonably have known, is incapacitated as a result of alcohol or other drugs.
- The use of alcohol or other drugs can have unintended consequences. Alcohol or other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and effectively given. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of the use of alcohol or drugs on another's ability to give consent. Being intoxicated or high does not diminish one's responsibility to obtain consent and is never an excuse for sexual harassment.

3. Displays of sexually explicit materials in a classroom setting may occur for bona fide academic and pedagogical reasons, and generally will not be considered a violation of this Policy, even if such displays are unwelcome and make an individual feel uncomfortable. In the event a complaint in which classroom displays are alleged to constitute sexual harassment, a committee of six members will be appointed to resolve the complaint. The committee will consist of the two faculty members on the SHRC and an additional faculty member appointed by the CAFR who has received appropriate training as determined by the Title IX Coordinator, the two student members of the SHRC, and one non-voting staff member, appointed by the Title IX Coordinator. COMPLAINTS
 - a. Any individual who believes he or she has been harassed in violation of this policy is strongly encouraged to promptly report the matter to an appropriate University official, as

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defined in this policy. If an employee has knowledge of conduct that may constitute a violation of this policy or receives a complaint alleging a violation of this policy, he or she must take steps to promptly report the concern. In addition, other individuals who witness or become aware of what they reasonably believe may be sexual harassment of another are encouraged to report their concerns as soon as possible to an appropriate University official, as defined in this policy. Failure to report concerns in a timely manner can impede the University's ability to resolve or investigate the concerns.

- b. As noted above, the University encourages individuals to file complaints as soon as possible. However, there is no period of limitations provided that the accused is a university employee or a third party with whom the University maintains an active relationship at the time the complaint is filed, regardless of the length of time between the alleged misconduct and the decision to file the complaint.
- c. Students should direct complaints to the Vice President of Student Life, the Dean of their School, the Department Chair or supervisor of the person whose conduct is in question, or to the University's Title IX Coordinator or a Deputy Coordinator. Staff employees should direct complaints to their supervisor, the University's Title IX Coordinator or a Deputy Coordinator, and/or to the appropriate Human Resources representative. Faculty may direct complaints to their Department Chair, their Dean or the Provost, the University's Title IX Coordinator or a Deputy Coordinator, or the appropriate Human Resources Representative. Faculty and staff may also report complaints to the Compliance Hotline at 877-880-7888 (toll free).
- d. All employees who are authorized to receive complaints under this Policy must immediately report the complaint to the University's Title IX Coordinator. Upon receipt of a complaint, the Title IX Coordinator or his/her designee shall determine if the facts alleged in the complaint constitute a violation of this Policy. If they do not, the Title IX Coordinator or his/her designee may close the complaint by notifying the reporting individual that the allegations do not constitute a violation of this Policy and take no further action. If the facts alleged in the complaint would constitute a violation of this Policy, as soon as practicable, the Title IX Coordinator will contact the complainant to schedule an initial meeting. At this initial meeting, the Title IX Coordinator will discuss the University's policy, available resources, resolution options and possible interim measures with the complainant. If the complainant is not the alleged victim, the Title IX Coordinator will, as soon as practicable, contact the alleged victim and attempt to conduct a similar meeting with him or her. If the victim wishes to pursue an informal or formal resolution through the University, as soon as practicable after the Title IX Coordinator's initial meeting with the victim, the Title IX Coordinator will provide written notice to the accused of the existence and general nature of the complaint and thereafter schedule an initial meeting with the accused. At this initial meeting, the Title IX Coordinator will discuss the University's policy, available resources, resolution options and possible interim measures. Following these meetings, and if appropriate, the Title IX Coordinator will assign an Investigator to investigate the complaint.

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- e. The Title IX Coordinator or his/her designee shall have the authority to take all reasonable and prudent interim measures, including no-contact orders, to protect the individual who may have been harassed pending completion of the investigation and during the informal or formal processes to resolve the complaint or any appeal thereof. Such interim measures may also be implemented whether a formal complaint has been filed or whether an investigation by either a University Investigator or law enforcement agencies has begun.
- f. In compliance with applicable laws and regulations, the University will take all reasonable and appropriate precautions to protect the confidentiality of the complainant and the individual accused of harassment.

A Complainant may determine after filing a complaint that he or she does not wish to pursue resolution of the complaint through the University. The University will respect such requests. However, as specified below, the University may be required by law to investigate the allegations. Complainants are advised that such requests may limit the University's ability to take action in response to a complaint.

Even when the University is in receipt of a request by a complainant not to pursue an investigation, Title IX may nevertheless require the University to investigate and take reasonable action in response to the information known to it. Thus, the University may take such measures and impose such discipline as are deemed necessary by the Title IX Coordinator to ensure that the educational and work environment at Wake Forest is free of harassment and to prevent the recurrence of a hostile environment, and, as appropriate, to remedy the effects of the alleged harassment. The Complainant's complaint may also be used as an anonymous report for data collection purposes under the Clery Act.

- g. In addition to violating University policy, Sexual Harassment may also constitute criminal activity. Complainants are strongly encouraged to inform law enforcement authorities about instances of Sexual Harassment. The chances of a successful criminal investigation are greatly enhanced if evidence is collected and maintained immediately by law enforcement officers. Complainants may inform law enforcement authorities about Sexual Harassment and discuss the matter with a law enforcement officer without making a formal criminal complaint or a formal University complaint. Complainants who make a formal criminal complaint may simultaneously pursue a formal University complaint. Assistance in reporting any form of sexual misconduct to the proper law enforcement authorities is available to upon request from the Safe Office (for student-complainants), the University Police, the University's Title IX Coordinator or a Deputy Coordinator, and/or the Office of the Dean of Students.
- h. If a criminal complaint is filed in addition to a complaint with the University, the University will not wait for the conclusion of any criminal investigation or proceedings before commencing its own investigation; however, the University's investigation may be

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delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, the University may take interim measures when necessary to protect the complainant and the University community. Such measures may result in actions being taken that may impact the accused.

- i. The University considers the reporting and adjudication of Sexual Harassment complaints to be of paramount importance. While the University does not condone underage drinking or illegal use of controlled substances, the University will extend limited immunity from punitive sanctioning in the case of illegal alcohol or substance use to complainants, accused individuals, witnesses and those reporting incidents and/or assisting complainants of Sexual Harassment.
- j. Both the complainant and the accused may be advised by a trained faculty or staff member and appointed by the Title IX Coordinator during any informal or formal resolution proceeding, as described below. The complainant and accused may also choose to be assisted by a support person who can be a Wake Forest student, faculty or staff member. As the informal and formal resolution procedures are not legal proceedings, legal counsel may not participate or be present in the hearing. Such counsel may, however, be available to provide private counsel and advice outside of any resolution proceeding.
- k. The Title IX Coordinator may appoint an investigator for informal resolutions pursuant to Paragraph 4 below and must appoint an investigator for formal resolutions pursuant to Paragraph 5 below. Persons appointed as investigators will be law enforcement officers, human resources staff, lawyers, or other equivalently competent individuals. All investigators will have appropriate investigatory and Title IX training.

4. INFORMAL RESOLUTION

- a. The informal resolution process is intended to resolve complaints quickly, efficiently, and to the mutual satisfaction of the parties involved. Where circumstances allow for this, the informal resolution process will be initiated as soon as possible after the filing of the complaint. Absent extenuating circumstances, the informal resolution process shall not extend longer than 45 days following the date a complaint is filed. The Title IX Coordinator may determine that a complaint is not appropriate for informal resolution. Informal resolution is not available for complaints of sexual assault, even on a voluntary basis. With the concurrence of the complainant and the accused, who shall first be provided notice of the nature of the complaint, the informal resolution process will proceed, and the Investigator or another individual designated by the Title IX Coordinator, with relevant supervisors when appropriate, will seek an outcome through informal resolution with the assistance of an appropriate University official designated by the Title IX Coordinator or his/her designee. Any resolution through this informal resolution procedure also must be mutually agreed upon by the parties involved. Both

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the complainant and the accused have the right to bypass or end the informal resolution process at any time and initiate the formal resolution process.

- b. Any failure to comply with the terms of an informal resolution agreement may result in disciplinary action and/or, if warranted, a further allegation of harassment.
- c. Records arising from the informal resolution process will not be used for any purpose other than those described above or to comply with applicable laws and regulations, unless a complaint subsequently results in a formal hearing or otherwise becomes part of a legal action. Since records of informal resolutions represent allegations not supported by formal findings of fact, they will be maintained in a confidential manner separate from any other records. Notwithstanding the foregoing, the University may also take into account prior accusations of the same or of a similar nature filed against an accused individual, and the University may take action to address concerns about repetitive behaviors that are inconsistent with the University's commitment to maintaining an educational and working environment free from sexual harassment.

5. FORMAL RESOLUTION

- a. If the complaint of harassment has not been resolved through use of the informal resolution process described above, or is of the kind that is not appropriate for informal resolution, the formal resolution process will be initiated.
- b. The formal resolution process is managed by a three-person panel of the Sexual Harassment Review Committee ("SHRC"). The SHRC will be composed of two faculty members, two students, two staff members, and two members of the University administration. One member of each group will be an alternate and will serve on the panel if the regular member is unavailable or unable to serve. The panel appointed to resolve a formal resolution shall consist of either a faculty member or staff member depending on whether the accused is a faculty member or staff member, an administrator, and a student, staff member, or faculty member depending on the status of the complainant (the third member will be of the same status as the victim). The Investigator will serve as an ex officio member of the panel. Members of the SHRC will be appointed for a term of three years (two years in the case of students) by the President, or his/her designee. For faculty members, the Committee on Academic Freedom and Responsibility will nominate five faculty members and the President or his/her designee will select two from among the five nominees. If neither the regular member nor the alternate can serve on a panel, an appointment to serve with respect to the particular matter at hand will be made by the President or his/her designee. If the panel requests, an individual designated by the Chief Human Resources Officer may serve as a staff to the Committee.

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- c. It is the responsibility of the Investigator to conduct a prompt, thorough and impartial investigation of the complaint. The formal resolution process for investigation of a complaint shall include interviews by the Investigator of the complainant the accused, and at the discretion of the Investigator witnesses or other individuals who are identified as potentially having some information relevant to the allegations and who agree to be interviewed. The Investigator will also collect documents and other physical or electronic information relevant to the complaint. The parties will have the opportunity to identify witnesses and present other evidence to the Investigator for consideration (subject to the reasonable discretion of the Investigator to limit such witnesses and documentation for relevancy and redundancy). The parties will each be provided copies of all witness statements, the Investigator's notes of any witness statements and other evidence presented to or obtained by the Investigator, and will be allowed an opportunity to submit a written statement commenting on the statements, notes and evidence. Individuals who are interviewed during the investigation will be advised that the matter is confidential and that retaliation is prohibited by this Policy.

The Investigator will report the results of the investigation to the Title IX Coordinator or his/her designee and to the Committee in a written report. The report will contain the facts gathered by the Investigator but will not make a determination about whether or not a violation occurred. The report shall include a copy of any written statements submitted by the complainant and accused as permitted in this Section, above, and copies shall also be provided to the complainant and the accused. The Investigator will be available to conduct such further investigation as the Committee deems appropriate. The complainant and the accused will also be provided the option to appear before the Committee to present a statement if they so choose. In addition, if the Committee desires to interview the complainant, the accused or any witness, in its discretion, it may do so. Such interviews will be conducted with only the person interviewed present (other than a trained advisor or support person). In the interviews the Committee may make such inquiries as it determines will assist in the performance of its duties. Issues regarding relevancy and the reliability of the evidence and testimony will be determined by the Committee. Irrelevant sexual history of either party may not be considered by the Committee.

- d. The Committee will review the results of the investigation to determine whether a violation of this Policy has occurred. The Committee's determination will be based on a majority of members and their finding based on a more likely than not standard. The Committee will prepare a report stating the evidence that was considered, how conflicting evidence was resolved, and the facts that form that basis of the Committee's determination, and whether a violation occurred. The Committee's report will be made available to the complainant, the accused, the Title IX Coordinator, the Chief Human Resources Officer or the faculty member designated by the Provost, and, if an appeal is taken, the Appeals Committee. If the Committee determines that a violation of the Policy has occurred, the matter will be referred to the Title IX Coordinator and a staff member designated by the Chief Human Resources Officer if a staff employee is found to be in

Comment [MDG2]: Query: "Summary" report requested by Administration, rather than more "full throated" report, as contemplated by this language.

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violation of this policy, or to a faculty member designated by the Provost if a faculty member is found to be in violation of this policy. The Title IX Coordinator will convey the findings in writing to the complainant and the accused. The designee of the Chief Human Resources Officer or the designee of the Provost will consult with the appropriate Department Head, Dean, or Vice President for appropriate corrective or disciplinary action. Sanctions imposed on faculty members or staff employees who have been found to be in violation of this Policy shall be commensurate with the severity and/or frequency of the conduct, and shall be intended to adequately and sufficiently prevent the same or similar conduct by the faculty member or staff employee in the future.

- e. The formal resolution process shall be completed within sixty days from the date the complaint is filed. However, if extenuating circumstances justify the need for additional time to complete the formal resolution process, an extension of time may be granted by the Title IX Coordinator. The parties involved will be notified of any extensions granted.

6. APPEALS

- a. The complainant or the accused may file a written appeal with the University's Title IX Coordinator within 14 calendar days from the date of the decision. The grounds on which an appeal may be taken are:
 - i. Appropriateness of the sanction;
 - ii. Germane new evidence not available at the time during the resolution proceedings that could significantly impact the outcome; and/or
 - iii. Procedural errors that significantly impact the outcome.
- b. Appeals will be reviewed by an Appeals Committee comprised of the Provost, the Senior Vice President for Administration, and the Chief Human Resources Officer or their respective designees. An alternate will be appointed by the President in the event a member of the Appeals Committee has a conflict of interest or otherwise is not in a position to serve on a particular appeal.
- c. The Appeals Committee is charged with reviewing the appeal and shall appropriately defer to the SHRC's findings. The Appeals Committee shall have access to all information that was available to the Sexual Harassment Review Committee, and shall have the opportunity to interview witnesses, including the Investigator, the complainant and the accused, separately. The decision of a majority of the Appeals Committee members will be final, and a written decision, including the reasons for the Appeals Committee's resolution, will be provided to the complainant and the accused within five (5) calendar days following completion of the Committee's review. Decisions to revoke

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the tenure of a faculty member will be addressed in accordance with the University's Procedure for the Dismissal of Tenured Faculty Members.

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