

# SEXUAL HARASSMENT: POLICY AND PROCEDURES

(Available on-line at <http://deanofstudents.uncg.edu/policy/>)

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Approved by UNCG Board of Trustees February 9, 1995

*This policy was accurate as of the date printed. For the most current revisions to this policy refer to the Web site referenced above.*

## **I. Statement of Policy**

Sexual harassment and discrimination are illegal and endanger the environment of tolerance, civility, and mutual respect that must prevail if the University is to fulfill its mission. The University of North Carolina at Greensboro is committed to providing and promoting an atmosphere in which employees can realize their maximum potential in the work place and students can engage fully in the learning process. Toward this end, all members of the University community must understand that sexual harassment, sexual discrimination, and sexual exploitation of professional relationships violate the University's policy and will not be tolerated. The University will take every step to resolve grievances promptly. Any act by the University's employees or students of reprisal, interference, or any other form of retaliation, whether direct or indirect, against a student or employee for raising concerns covered by this policy is also a violation of this policy. Accordingly, members of the University community are prohibited from acts of reprisal against individuals who bring complaints or are involved as witnesses in any action connected with this policy.

### **A. Applicability**

This policy applies to all applicants for employment and admission to University programs, officers, and employees of the University, students, and persons who serve the University as its agents and are under the control of the University. Specific adherence to this policy shall be made an express term of every contracted services agreement entered into by the University.

### **B. Sexual Harassment - Definition**

Two categories of sexual harassment are recognized:

#### **1. Quid Pro Quo**

Sexual harassment presented as a "bargain" (quid pro quo). Unwelcome sexual advances, request for sexual favors, and other verbal and physical conduct of a sexual nature by one in a superior position constitutes "bargained-for sexual harassment" when submission by another is made either an explicit or implicit term or condition of employment or of academic standing. In this case apparent consent of the submitting party is less relevant than the extent to which the sexual conduct is unwelcome. As defined here, "bargained-for sexual harassment" normally arises in the context of an authority relationship. This relationship may be direct as in the case of a supervisor and subordinate or teacher and student or it may

be indirect when the harasser has the power to direct others who have authority over the victim.

## 2. Environmental Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature constitute "environmental sexual harassment" when such conduct has the purpose or effect of creating an intimidating, hostile, or offensive environment which unreasonably interferes with another's work, academic performance, or privacy. Environmental harassment can inflict emotional and psychological harm on individuals and can make relationships and the work or study environment unpleasant, threatening and unproductive. However, there is no requirement that evidence of actual emotional or psychological harm be shown in order for environmental sexual harassment to be found to have occurred.

In determining whether alleged conduct constitutes sexual harassment as defined in this policy, the record as a whole will be considered as well as the context in which the conduct occurred. "Environmental sexual harassment" normally arises from a repeated and pervasive course of conduct whereas "bargained-for sexual harassment" can be based on a single act.

Facts will be judged on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular susceptibility of an individual, unless that susceptibility is known to the alleged harasser.

## C. Penalties

Penalties will be determined on the basis of the facts of each case and the extent of harm to the University's interests, as well as any University record indicating previous similar wrongdoing by the accused person. Penalties will be set according to regulations governing student conduct and employment relationships. These regulations, are described in the *Student Code of Conduct*, the UNCG Web site (<http://deanofstudents.uncg.edu/policy/>), the *Handbook for Faculty*, and the *Policy Manual for Staff Employees*.

## D. Anti-retaliation Assurance

This policy seeks to encourage students and employees to express freely, responsibly, and in an orderly way opinions and feelings about any problem or complaint of sexual harassment. Any act of reprisal, including internal interference, coercion, and restraint by a University employee or by one acting on behalf of the University, violates this policy and will result promptly in appropriate disciplinary action.

## E. Improper complaints

This policy shall not be used to bring frivolous or malicious complaints against students or employees. If a complaint has been made in bad faith, disciplinary action will be taken against the person bringing the complaint.

**F. Confidentiality**

Information generated in the course of informal reviews and formal investigations necessary to enforce this policy will be given the full extent of confidentiality accorded by law to employee personnel records and student educational records. Any person who, without authorization, reveals such information will be subject to disciplinary action. The sharing of the content of complaints will be on a "need to know" basis and will depend on the type of review and response required by the complainant. In any case when a complaint is being mediated and/or investigated, the accused will be informed of the specific details of the complaint.

**G. Responsibility for Implementation**

An employee in a supervisory position who has knowledge of conduct involving sexual harassment that may have occurred in his or her unit must take action to address the matter immediately. Failure to do so may result in serious consequences for the University and will be considered a breach of supervisory responsibility and is subject to disciplinary action.

**II. Procedures for Review**

**A. Initiation of complaint**

1. Employees

An employee who wishes to complain of sexual harassment by another employee or other non-student agent of the University must initially communicate the facts of the complaint to one of the following: (1) the supervisor or faculty department head most directly concerned, excluding the person accused<sup>1</sup>, or (2) the Affirmative Action Officer. An employee who wishes to complain of sexual harassment by a student must initially communicate the facts to the Office of the Vice Chancellor for Student Affairs.

The complaint may be initially communicated orally, but it must be presented in writing before any review or other action takes place.

2. Students

<sup>1</sup> If the complainant has a reasonable basis for believing that the supervisor of the accused may not be objective, the complainant may communicate the complaint to the next higher level supervisor.

A student who wishes to complain of sexual harassment by a faculty member, employee, or other non-student agent of the University must initially communicate the facts of the complaint to one of the following: (1) the supervisor or faculty department head most directly concerned, excluding the person accused<sup>1</sup>, (2) the Office of the Vice Chancellor for Student Affairs, or (3) the Affirmative Action Officer. If a student has a complaint about a possible violation of this policy by another student, the complaint must be communicated to the Office of the Vice Chancellor for Student Affairs.

The complaint may be initially communicated orally, but it must be presented in writing before any review or other action takes place.

## **B. Duties of the Official Receiving the Complaint**

The Official receiving the complaint must do the following things:

1. Advise the complainant of the meaning and importance of this policy, the seriousness of the complaint, the penalties for making improper complaints, and the University's commitment to prevent retaliation.
2. Make written notes of the allegations.
3. Explain the options for handling the complaint as described in Section II.C., document the complainant's choice, and explain that the complaint must be submitted in writing before any review or other action takes place.
4. Advise the complainant of the University's policy on confidentiality.
5. Notify the University Counsel and the Affirmative Action Officer, in writing, of the complaint, of the advice given to the complainant, and of the option chosen by the complainant.

## **C. Options for Investigation and Resolution**

Complaints may be resolved through either informal or formal processes as described below. Informal means are encouraged as the beginning point, but the choice of where to begin rests with the complainant. Additionally, a complainant may elect to withdraw a complaint at any time; however, *because all egregious acts must be investigated, the University reserves the right to investigate all complaints where necessary to protect the interests of the University or the community.*

1. Informal Resolution Options
  - a. Individual Resolution

The complainant may attempt to resolve the matter directly with the accused individual and report back to the official receiving the complaint within a mutually agreed time.

b. Mediation

The complainant may request that an attempt be made to resolve the complaint through mediation. If such a request is made, the official receiving the complaint shall determine whether the accused is willing to engage in mediation, and, if so, a mediator shall be selected by mutual agreement of the complainant and the accused. The role of the mediator is to facilitate discussion and to suggest alternative resolutions. The mediator does not investigate the complaint or assign blame. The mediator will report the outcome of the process to the official receiving the complaint.

c. Reporting the Outcome of Informal Resolution

The official receiving the complaint will notify the University Counsel and the Affirmative Action Officer in writing of the outcome of the informal resolution process.

2. Formal Resolution Options

a. Administrative Investigation and Resolution

The complainant may request that the complaint be administratively investigated and resolved. *Because all egregious acts must be investigated, even in the absence of such a request, the official receiving the complaint may initiate an administrative investigation if, after consultation with the University Counsel, an investigation is deemed necessary to protect the interests of the University or the community.* If the accused is an employee or agent of the University, the investigation will be conducted by the accused's supervisor with assistance from the official receiving the complaint<sup>3</sup>. If the accused is a student, the investigation will be conducted by the Office of Student Affairs. The investigator(s) will do the following things:

1. Make inquiries of those persons who may be able to verify the truth of the complaint, especially including the accused. (Due regard must be given to the principles of confidentiality.) The complainant should be given advance notice of the date when the accused will be informed about the complainant's accusations.
2. Communicate with the Affirmative Action Officer to determine whether there have been other complaints of sexual harassment made to the University by the complainant or about the accused.

<sup>3</sup> If the complainant has a reasonable basis for believing that the supervisor of the accused may not be objective, the investigation will be conducted by the next higher level supervisor.

3. Prepare a written report of the complaint which includes
  - an identification of the complainant and the accused
  - the complainant's written statement of the complaint
  - the accused's response to the complaint
  - the findings and a summary of the facts that constitute the basis for those findings
  - a discussion of any problems encountered in the investigations, such as lack of witnesses or refusal of the accused to respond
  - the resolution or recommendation for resolution<sup>4</sup>

A final copy of the report will be sent to the complainant and the accused along with notice that either party may submit written comments for inclusion with the report within 7 days of receipt of the report. The final report, along with the parties' comments, will be provided to the University Counsel and the Affirmative Action Officer<sup>5</sup>.

Either party who is dissatisfied with the report or with the resolution of the complaint may appeal by filing a formal grievance with the appropriate employee or student grievance committee<sup>6</sup>.

b. Investigation and Hearing by Committee

Any student or employee who wishes to bring a complaint under this policy may directly request an investigation and hearing by a grievance committee or may approach this step following unsuccessful attempts at informal resolution under sections II.C.1 or 2. In addition, any person subject to adverse administrative action as the result of an administrative investigation and resolution under section II.C.2.a, may bring a complaint for resolution by formal investigation and hearing, as described in the following:

1. Types of Formal Committee Review Procedures

<sup>4</sup> If the resolution or recommendation includes disciplinary action, the reference to that action shall be redacted from the copy sent to the other party.

<sup>5</sup> Due to exigencies inherent in the academic calendar no set time is mandated for completion of the investigation and report. However, in fairness to both the accused and the accuser, the investigation and report should be completed expeditiously.

<sup>6</sup> In the case of complaints by students against staff or faculty, appeals, by either party, should be filed with the appropriate employee or student grievance committee. In the case of complaints by students against other student should be filed under the *Student Code of Conduct*.

The particular route for accomplishing a formal investigation and hearing depends on the status of the complainant as referenced in the following:

a. Students

A student or student employee who has a complaint under this policy against another student will proceed in accordance with the *Student Code of Conduct*. Information concerning the *Code* is contained in the *UNCG Calendar/Student Handbook* and on the University's Web site (<http://deanofstudents.uncg.edu/policy/code>) and is available from the Office of the Vice Chancellor for Student Affairs. At the discretion of the Vice Chancellor for Student Affairs or his/her delegate, a complaint by a student employee against another student employee may be heard in administrative proceedings of the area where the grievance arose.

A student or student employee who has a complaint under this policy against a faculty member or other employee or other agent of the University will proceed in accordance with the *Grievance Procedures for UNCG Students*, contained on the University's Web site (<http://deanofstudents.uncg.edu/policy/>). Information concerning this process is available from the Office of the Vice Chancellor for Student Affairs.

b. Faculty

A faculty member who has a complaint under this policy against any other employee or agent of the University may proceed in accordance with the procedures of the Faculty Grievance Committee. However, a faculty member who alleges a violation of this policy as evidence of discrimination in reaching a non-reappointment decision or in the case of discharge or serious sanction will complain to the Faculty Due Process Committee. Information on the procedures of the Faculty Grievance Committee and the Faculty Due Process Committee is available from the Office of The Provost.

A faculty member who has a complaint under this policy against a student will proceed in accordance with the *Student Code of Conduct*. Information concerning the *Code* is contained in the *UNCG*

*Calendar/Student Handbook* and on the University's Web site  
(<http://deanofstudents.uncg.edu/policy/>)  
and is available from the Office of the Vice Chancellor for Student Affairs.

c. Employees Subject to the State Personnel Act (SPA)

Complaints will be filed in accordance with the *Grievance Policy and Procedures for Staff Employees Subject to the State Personnel Act, (SPA)*, contained in the *Policy Manual for Staff Employees*. SPA employees and applicants for SPA positions have the additional option of filing a complaint with the North Carolina Personnel Commission. Information on either of these procedures is available from the Office of Human Resources.

d. Employees Exempt from the State Personnel Act (EPA)

Complaints will be filed in accordance with *Personnel Policies for Designated Employment Exempt from the State Personnel Act, (EPA)*, contained in the *Policy Manual for Staff Employees*. Information on these procedures is available from the Office of the Provost.

2. General Guidelines for Formal Committee Review

All steps of inquiry into complaints made under this policy will be closed and confidential. The chair of the review committee hearing a case under this policy will advise all members and participants of their obligation to maintain confidentiality of the complaint and evidence presented at the hearing, and, where appropriate, will seek legal advice on the personal and institutional liability for failure to do so.

The hearing body will notify the person bringing the complaint of the obligation to present sufficient evidence to prove the case. The hearing body will examine only evidence which is relevant to the complaint.

At the conclusion of the review, all documents that have been generated will be sent to the University Counsel. In addition to following reporting requirements pertaining to various review committees which may hear a case under this policy, the review committee will provide a copy of its final report and recommendations to the University Counsel and the Affirmative Action Officer.

Any supervisor or administrator receiving such a report and recommendations has the obligation, before deciding a response, to communicate with the Affirmative Action Officer about any previous similar complaints within the University against the accused and any other similar complaints brought by the complainant against others within the University.

The supervisor or administrator making a decision on the matter will notify the accused and the complainant in writing. He or she will provide copies of the final decision to the University Counsel and to the Affirmative Action Officer. If the decision results in a disciplinary action against the accused, the supervisor or administrator will provide one copy of the writing describing his or her action for placement in the official University records of the accused, with notification to the accused of remedies granted to employees who object to material in a personnel file.

Following the completion of the appropriate review of the complaint, either the complainant or the accused may appeal the disposition of the matter according to existing University procedures. Information concerning such procedures is available in the Office of Human Resources (SPA), the Office of the Provost (EPA), and the Office of Student Affairs (students).