



THE UNIVERSITY OF NORTH CAROLINA SYSTEM

MEMORANDUM

TO: Chancellors

FROM: Thomas C. Shanahan, Senior Vice President and General Counsel

DATE: February 26, 2018

RE: Request for Comment on Policies/Regulation Proposed by the UNC Campus Security Committee

Comments Due by March 26, 2018, to Jayne M. Grandes, University Compliance Director,
jmgrandes@northcarolina.edu.

Attached for your review are the following policies and regulation, which have been prepared by the UNC Campus Security Committee and presented to the president for consideration:

1300.9, Policy on Providing Safety and Security Presentations to University Boards

1300.10, Policy on Prohibited Discrimination and Harassment Based on Sex, Sexual Orientation, or Gender Identity

1300.10[R] with Appendix A, Regulation on Prohibited Discrimination and Harassment Based on Sex, Sexual Orientation, or Gender Identity

In addition, the UNC System Office has drafted a revision to *The Code* and UNC System policy regarding expulsion appeals to the Board of Governors, based on suggestions received during recent meetings of the Title IX Working Group:

Chapter 502 D, *The Code*

Section 700.4.1, UNC Policy Manual

I. Background

The UNC Campus Security Initiative was launched in August of 2013 to study system-level coordination of security and student safety efforts at our 17 constituent institutions. The Initiative released its final [report](#) in July of 2014, which contained 36 recommendations, including a recommendation that the University establish a system-wide Campus Security Committee composed of campus police and emergency operations personnel, legal counsel, Clery compliance and Title IX staff, student affairs personnel, faculty, students, employees and others in an ongoing effort to address safety and security issues. The UNC Campus Security Committee, consisting of representatives from 14 constituent institutions, convened for the first time in February 2016, meeting over the course of the year. Consistent with the Campus Security Committee's charter, the committee focused its 2016 work on the continuing

implementation of the system-level recommendations in the 2013-14 Campus Security Initiative Report. Consistent with the report, the committee has drafted and presented to the president: (1) a policy requiring regular communication of safety and security information to University boards and leadership in order to help inform decision-making in these areas, and (2) a draft system-wide policy and regulation on prohibited discrimination and harassment.

This request for comment asks for your review and feedback on these drafts.

II. 1300.9, Policy on Providing Safety and Security Presentations to University Boards

If adopted by the Board of Governors, this policy would generally require chancellors or their designees to provide annual presentations to their boards of trustees on campus safety- and security-related efforts and resource needs. This is considered a governance best practice, which many UNC institutions have already adopted. The policy would also require the president or the president's designee to provide an annual presentation to the Board of Governors. The committee believes that regular discussion of campus safety matters with University leadership will help inform University leadership's decision-making and increase risk awareness. *This proposed policy is consistent with Recommendation 1 of the Campus Security Initiative Report.*

III. 1300.10, Policy on Prohibited Discrimination and Harassment Based on Sex, Sexual Orientation, or Gender Identity

1300.10[R] with Appendix A, Regulation on Prohibited Discrimination and Harassment Based on Sex, Sexual Orientation, or Gender Identity

This policy and regulation set baseline requirements for UNC constituent institutions consistent with federal regulations related to sex- and gender-based discrimination and harassment, including Title IX and the Clery Act. Appendix A to the regulation includes definitions developed by the committee of key terms, which constituent institutions may choose to use (but are not required to use) in their own policies. While the regulation does not mandate that institutions use these definitions, some institutions may have concern that they will be expected to adopt them. Other constituent institutions, however, may have the opposite concern that the regulation does not require use of these definitions and, therefore, will not provide a consistent foundation system-wide.

The policy and regulation were drafted by the committee prior to the U.S. Department of Education's recent repeal of certain Title IX subregulatory guidance. The content, however, is consistent with current law and regulation, as well as agency guidance that remains in effect notwithstanding the withdrawal of the 2011 Dear Colleague Letter and the 2014 Question & Answers on Title IX and Sexual Violence. *This proposed policy and regulation is consistent with Recommendation 2 of the Campus Security Initiative Report.*

IV. Chapter 502 D, The Code

Section 700.4.1, UNC Policy Manual

The proposed amendments to Chapter 502 D and Section 700.4.1 of the UNC Policy Manual are intended to implement the recommendation from the Title IX Working Group to eliminate the right to appeal student expulsion decisions to the Board of Governors. If the Board of Governors agrees with this

February 26, 2018

Page 3 of 3

recommendation, students would continue to have the right to appeal suspension and expulsion decisions to the boards of trustees, but their appeal rights would end there.

The University's policy development process depends on input from chancellors, constituent institution faculty and staff, and other subject matter experts in order to ensure that items developed for inclusion in the UNC Policy Manual reflect a thorough review of academic, policy, financial, and other considerations. Accordingly, please review and provide comments on the attached drafts with input from your senior staff and others as you deem appropriate. **Please provide comments on the draft in a single document from your campus and send your comments to Jayne Grandes by March 26, 2018. The comments we receive will be considered as revisions and adjustments are made to the draft items.**

These policies will **not** be on the agenda for the March Board of Governors meeting.

cc: Chief Academic Officers
Chief Student Affairs Officers
Chief Financial Officers
Chief Legal Officers
Chiefs of Staff
Margaret Spellings, President
Meredith B. Didier, Chief of Staff
Junius Gonzales, Senior Vice President for Academic Affairs
Karrie Dixon, Vice President for Academic and Student Success
Matthew S. Brody, Vice President for Human Resources
Lynne Sanders, Vice President for Compliance and Audit Services
Jayne Grandes, University Compliance Director

**Policy on Providing Safety and Security Presentations to
University Boards**

I. Purpose. The Board of Governors adopts this policy to assure that University and constituent institution boards receive campus safety and security presentations on a regular basis to inform their decision making on policy matters related to safety and security at their institutions.

II. Annual Presentations to Boards of Trustees. The chancellor of each constituent institution or his or her designee shall provide an annual presentation to the constituent institution's board of trustees with relevant data and information concerning campus security, the safety of students and others, sexual assault, alcohol and drug use, risk management, and associated institutional policies. Presentations to boards of trustees may address the following:

- A. Relevant information concerning campus climate and student health and wellbeing;
- B. A review of institutional policies, legal obligations, and compliance requirements associated with campus security, student safety, and campus law enforcement operations;
- C. De-identified data concerning alcohol and drug use by students and use associated with student organizations;
- D. Information concerning the nature of risks, likelihood of occurrence, and risk mitigation activities associated with student safety, including sexual assault, dating violence, domestic violence, stalking, and other offenses against persons;
- E. De-identified data concerning disciplinary proceedings associated with sexual assault, dating violence, domestic violence, stalking, and other offenses against persons; and
- F. A description of staffing needs and costs associated with safety and security, including information about time and resources spent by campus personnel on compliance with federal and state legal requirements; time and resources spent providing training required by regulation; time and resources spent conducting investigations of student conduct matters; and time and resources spent preparing for and conducting hearings of student conduct matters, including all pre- and post-hearing activities.

III. Annual Presentation to the Board of Governors. The president or president's designee shall provide an annual campus safety and security presentation to the Board of Governors, which may include information presented to boards of trustees and any other relevant information.

IV. Other Matters

- A. Effective Date. The requirements of this policy shall be effective on the date of adoption of this policy by the Board of Governors.

B. Relation to State Laws. The foregoing policy as adopted by the Board of Governors is meant to supplement, and does not purport to supplant or modify, those statutory enactments which may govern or relate to the subject matter of this policy.

C. Regulations and Guidelines. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

**Policy on Prohibited Discrimination and Harassment Based on
Sex, Sexual Orientation, or Gender Identity**

I. Purpose. Consistent with Section 103 of *The Code of The University of North Carolina*, the Board of Governors adopts the following policy prohibiting discrimination or harassment, including violence, based on sex, sexual orientation, or gender identity. In doing so, the University of North Carolina (the University) seeks to provide a safe, welcoming, and inclusive environment for students, faculty, staff, visitors, and contractors free from unlawful discrimination, including discrimination and harassment based on sex, sexual orientation, and gender identity. Maintaining a welcoming and inclusive environment requires ongoing awareness and prevention efforts, as well as prompt, thorough, impartial, and equitable institutional responses consistent with requirements of due process in the event a constituent institution receives a report or becomes aware of discrimination or harassment.

The purpose of this policy is to establish standards for constituent institutions' policies and procedures, and the resources and programs that shall be maintained and provided by each constituent institution in accordance with applicable laws and regulations.

II. Requirements. Constituent institutions shall adopt and maintain policies, procedures, or related documents which address the following related to discrimination or harassment, including violence, based on sex, sexual orientation, or gender identity:

A. The process the constituent institution will follow in the event it becomes aware of or receives a report of discrimination or harassment, including information about investigation and adjudication;¹

B. Regular training and education for students, faculty, and staff;

C. Minimum training and qualifications of staff involved with responding to or addressing reports of discrimination or harassment, including investigators and adjudicators;

D. Confidential resources and confidentiality limitations, formal reporting options, and constituent institutions' obligation to respond to a report in a fair and impartial manner consistent with due process requirements; and

E. Other appropriate and related requirements, in accordance with applicable law. Constituent institutions may incorporate the requirements of this policy into a single policy, procedure, or related document, or into multiple policies, procedures, and related documents.

¹ As used in this policy, the term "adjudication" may be interpreted broadly to refer to a hearing or other formal or informal disciplinary proceeding.

III. Data and Information. Constituent institutions shall provide such data and information as may be requested by the president or the Board of Governors to help assure a fully functional compliance program.

IV. Other Matters

A. Effective Date. The requirements of this policy shall be effective on the date of adoption of this policy by the Board of Governors.

B. Relation to Federal and State Laws. The foregoing policy as adopted by the Board of Governors is meant to supplement, and does not purport to supplant or modify, those statutory enactments which may govern or relate to the subject matter of this policy.

C. Regulations and Guidelines. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

**Regulation on Prohibited Discrimination and Harassment
Based on Sex, Sexual Orientation, or Gender Identity**

I. Purpose. This regulation clarifies and establishes minimum requirements for constituent institutions relevant to awareness, prevention, and response efforts related to prohibited discrimination and harassment, including violence, based on sex, sexual orientation, or gender identity. This regulation supplements and does not replace constituent institutions' obligations under applicable federal and state laws, regulations, guidance, and other relevant policies, regulations, and guidelines within *The Code* and the UNC Policy Manual.¹

II. Requirements

A. Written policies, procedures, and related documents. Each constituent institution shall have written policies and procedures related to prohibited discrimination and harassment, including violence, based on sex, sexual orientation, or gender identity, which apply to students, faculty, staff, visitors, contractors, and other third parties and which comply with the minimum requirements of applicable federal and state laws and regulations, including Title IX of the Education Amendments of 1972 (Title IX), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act),² and the Violence Against Women Act (VAWA). Consistent with these applicable requirements, constituent institutions' written policies, procedures, and related documents shall:

1. Include a policy statement which prohibits discrimination and harassment, including violence, based on sex, sexual orientation, or gender identity, provides for dissemination of the constituent institution's policy, addresses reporting, and prohibits retaliation for making reports;
2. Define key terms as required by applicable laws and regulations, including, but not limited to, Sexual Harassment, Sexual Violence, Sexual Assault, Dating Violence, Domestic Violence, Consent (as it relates to sexual activity), Stalking, Retaliation, Incapacitation, Responsible Employees, Campus Security Authority, and Confidential Resources;³
3. List conduct prohibited by the institution, including domestic violence, dating violence, sexual assault, and stalking, and the full range of possible sanctions or protective

¹ Additional authority which may be relevant to this regulation and which may provide additional requirements for constituent institutions includes, but is not limited to, Title IV of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Executive Order 13672, Executive Order 11246, Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, Violence Against Women Act, N.C. Gen. Stat. § 143-422.2, Section 103 of *The Code*, and Section 700.4.1.1[R] of the UNC Policy Manual.

² As a constituent high school of the University of North Carolina, the North Carolina School of Science and Mathematics (NCSSM) is not subject to the requirements of the Clery Act.

³ Appendix A to this regulation provides a list of definitions as a resource, which constituent institutions may elect to use at their discretion.

measures that may be imposed following a final determination resulting from an institutional disciplinary proceeding;

4. Distinguish prohibited conduct from the exercise of academic freedom and freedom of speech;⁴
5. Explain the constituent institution's procedures and options for reporting, as well as procedures for the prompt, thorough, impartial, and equitable investigation and adjudication⁵ of a report of discrimination or harassment based on sex, sexual orientation, or gender identity;
6. Not conflict with grievance and disciplinary procedures of the constituent institution;
7. State that, if a reporting party requests that the reporting party's identity remain confidential, the constituent institution will evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students, employees, and third parties in order to determine the steps the institution will take to pursue the matter;
8. Include reasonably prompt timeframes for major stages of the disciplinary process(es);
9. State that the constituent institution shall have a Title IX coordinator, and list the name or title and contact information of that individual, and explain the Title IX coordinator's role;
10. Make use of the standard of evidence required by Section 700.4.1.V., and VI., of the UNC Policy Manual for evaluating reports of discrimination or harassment based on sex, sexual orientation, or gender identity;
11. Require the development and implementation of annual training the constituent institution will provide for students, faculty, and staff, in accordance with applicable laws, regulations, and policies, including section III of this regulation;
12. Identify and provide for regular training of campus security authorities and responsible employees;
13. State that the constituent institution will provide a prompt, thorough, and impartial investigation and adjudication process that provides appropriate procedural safeguards;

⁴ For reference, see Sections 600, 601, and 602 of *The Code* and Section 1300.8 of the UNC Policy Manual.

⁵ As used in this regulation, the term "adjudication" may be interpreted broadly to refer to a hearing or other formal or informal disciplinary proceeding.

14. Provide both parties with written documentation of their rights, options, and interim measures available to protect their safety and well-being;
15. Provide parties with the opportunity to present evidence;
16. Provide parties with equal opportunity to be represented by attorneys/advocates;⁶
17. Provide for simultaneous notification in writing to both parties of the outcome of an institutional disciplinary proceeding;
18. List all possible remedies and sanctions the constituent institution may impose following the results of an institutional disciplinary proceeding;
19. Provide that the constituent institution will maintain records of all reports and their outcomes in accordance with the records retention policy;
20. Provide information about, including contact information for, the on- and off-campus resources available to both parties;
21. Address and identify confidential resources and confidentiality limitations;
22. Address and identify formal reporting options, including the option to notify law enforcement, as well as the constituent institution's obligation to respond to a report.

Constituent institutions may include the above components in a single set of written policies, procedures, and related documents or may incorporate them into multiple sets of policies, procedures, and related documents, but shall consider student, faculty, staff, and third-party ease-of-use when determining the appropriate locations for these components.

III. Training, Education, and Awareness, and Prevention Programs

A. **Students and Employees.** Constituent institutions shall provide at least annual training to all students and employees, Campus Security Authorities, responsible employees, Title IX coordinators, Clery compliance officers, and investigators and adjudicators of discrimination or harassment based on sex, sexual orientation, or gender identity in accordance with Title IX, the Clery Act, VAWA, and due process requirements.

B. **Additional Training for Individuals Involved in Institutional Response to Reports.** In addition to annual training provided to all students and employees, constituent institutions shall provide training opportunities for Title IX coordinators, Clery compliance officers, investigators, and adjudicators of discrimination or harassment based on sex, sexual orientation, or gender identity with content specific to their roles and responsibilities.

⁶ Section 700.4.1.1[R], UNC Policy Manual.

C. Ongoing Prevention and Awareness Campaign and Programs. Each constituent institution shall implement a multi-faceted and ongoing prevention and awareness campaign for students and employees. Each constituent institution shall also implement prevention programs, including bystander intervention programming.

IV. Personnel

A. Title IX Coordinator. Each constituent institution shall designate a Title IX coordinator with sufficient time and resources to coordinate the constituent institution's efforts to comply with and carry out its responsibilities under Title IX, including investigations and adjudications. Constituent institutions shall include the name or title and contact information of the Title IX coordinator(s) in its written policies, procedures, and related documents, as well as explain the Title IX coordinator's role(s). The Title IX coordinator at each constituent institution should work closely with the director of university compliance at the University of North Carolina System Office to help assure compliance with current laws, regulations, and policies.

B. Investigators and Adjudicators. Reports or complaints involving discrimination or harassment based on sex, sexual orientation, or gender identity shall be investigated and adjudicated by individuals with appropriate professional training and investigative experience. Students shall not serve on constituent institution student disciplinary hearing panels in cases involving discrimination or harassment, including violence, based on sex, sexual orientation, or gender identity.

V. Shared Services. The UNC System Office staff will, as resources permit, assist constituent institutions in acquiring the services of an investigator and/or adjudicator with sufficient training and/or experience to address matters involving discrimination or harassment based on sex, sexual orientation, or gender identity, should a constituent institution require assistance in this area.

VI. Reporting Options and Confidential Resources. Each constituent institution shall designate in its written policies and procedures confidential resources available on- and off-campus. Written policies and procedures shall also make clear the ways in which an individual may formally report discrimination or harassment based on sex, sexual orientation, or gender identity as well as the circumstances in which the institution is obligated to respond to and investigate a report of discrimination or harassment based on sex, sexual orientation, or gender identity. Consistent with federal laws and regulations, constituent institutions shall also explain in their written policies and procedures the difference between their ability to maintain privacy of a report versus their ability to maintain confidentiality and the circumstances under which a reporting party may expect privacy versus confidentiality.

VII. Other Matters

A. Effective Date. The requirements of this regulation shall be effective on the date of adoption of this regulation by the president.

B. Relation to Federal and State Laws and Policies. The foregoing regulation is meant to supplement, and does not purport to supplant or modify, those statutory enactments, regulations, and policies which may govern or relate to the subject matter of this regulation.

**Appendix A:
Definitions for Terms Related to Discrimination and Harassment Based on
Sex, Sexual Orientation, or Gender Identity**

I. Purpose. This appendix provides definitions for terms which Section 1300.10[R] of the UNC Policy Manual requires constituent institutions to define in their policies, procedures, or related documents concerning harassment based on sex, sexual orientation, and gender identity, as well as other relevant definitions. This appendix is intended solely as a resource and supplement and does not replace constituent institutions' obligations under applicable federal and state laws, regulations, guidance, and other relevant policies. Use of these definitions is at the discretion of constituent institutions and is not mandatory. Definitions in this appendix may be updated to reflect changes in applicable laws, regulations, or guidance.

II. Definitions. The following are definitions for selected terms referenced in Section 1300.10[R] II.A., of the UNC Policy Manual. Definitions as included in this section may not be consistent with applicable criminal law definitions of the same or similar terms.

A. Campus Security Authority. "Campus Security Authority" is a specific term in the Clery Act that encompasses four groups of individuals and organizations associated with a constituent institution:

1. A campus police department or a campus security department of a constituent institution;
2. Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department (e.g., an individual who is responsible for monitoring the entrance into institutional property);
3. Any individual or organization specified in a constituent institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses; and
4. An official of a constituent institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings. An official is defined as any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.

B. Coercion. "Coercion" is unreasonable and unwanted pressure to engage in sexual activity. Coercion differs from seduction by the repetition of the coercive behavior beyond what is reasonable and the degree of pressure applied. Coercion includes, but is not limited to, threatening, cajoling and/or pressuring an individual into sexual activity. Examples of coercion include the deliberate incapacitation of another person; conditioning an academic benefit or employment advantage on submission to sexual activity; threatening to harm oneself or others if the other party does not engage in sexual activity; or threatening to disclose an individual's sexual orientation, gender identity, or other personal, sensitive information if the other party does not engage in sexual activity. Consent is not provided if coercion is present.

C. Confidential Resources. “Confidential Resources” are offices or agencies, both on campus and off, staffed by trained professionals who can provide counseling, information, and support in a confidential setting. Confidential resources will not share information about an individual (including whether that individual has received services) without the individual’s express permission, unless there is a continuing threat of serious harm to the individual or to others or there is a legal obligation to reveal such information (for example, suspected abuse or neglect of a minor). These professionals are available to help an individual make a report to the constituent institution of conduct that violates this policy. The following is a list of confidential resources currently available: [LIST RESOURCES].

D. Consent. “Consent” is approval and permission to engage in mutually agreed upon sexual activity demonstrated by clear actions, words, or writings. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in sexual activity. Informed consent is freely and voluntarily given and it is mutually understood by all parties involved. An individual who engages in sexual activity when the individual knows, or reasonably should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the other. If a person is under the age of legal consent, asleep, or incapacitated, as defined in “Incapacitation,” there is no consent. If coercion, intimidation, threats, and/or physical force are used, there is no consent. Consent is not to be inferred from silence, passivity, or a lack of resistance, and relying on non-verbal communication alone may result in a violation of this policy. Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be consent to engage in sexual activity. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Consent can be withdrawn at any time and requires an outward demonstration through understandable words or actions that clearly conveys that a party is no longer willing to engage in sexual activity. Once consent is withdrawn, the sexual activity must cease immediately.

E. Gender Identity. “Gender Identity” is an individual’s internal sense of gender, which could be male, female, a blend of both, or neither. A person’s gender identity may be different from the same person’s sex assigned at birth.

F. Incapacitation. “Incapacitation” is when a person lacks the mental and/or physical ability to make informed, rational judgments about whether or not to consent to engage in an activity due to unconsciousness; intermittent consciousness; lack of awareness; and/or a state beyond intoxication from alcohol and/or other legal or illegal substances. Incapacitation is determined by the specific facts associated with the person’s decision-making ability, awareness of consequences, and ability to make informed decisions regarding their health, safety, wants, and needs. A person who is incapacitated is unable to give consent.

G. Interpersonal Violence. “Interpersonal Violence” (also commonly referred to as intimate partner violence, dating violence, domestic violence and relationship violence), can encompass a broad range of abusive behavior committed by a person who is or has been:

1. In a romantic or intimate relationship with the reporting party (of the same or different sex);
2. The reporting party’s spouse or partner (of the same or different sex);

3. The reporting party's family member; or
4. The reporting party's cohabitant or household member, including a roommate.

Whether there was such relationship will be gauged by its length, type, and frequency of interaction. Interpersonal Violence includes physical, sexual, emotional, economic, or psychological actions or threats of actions that a reasonable person in similar circumstances and with similar identities would find intimidating, frightening, terrorizing, or threatening. Such behaviors may include threats of violence to one's self, one's family member, or one's pet.

H. Retaliation. "Retaliation" is any adverse action taken by any person against an individual because that individual made a good faith report of conduct prohibited by this policy or participated in good faith in any proceeding under this policy.

1. Retaliation includes threats, intimidation, harassment, coercion or any other conduct that would discourage a reasonable person from engaging in conduct protected under this policy.
2. Retaliation may be present even where there no finding of liability for any conduct alleged to violate this policy.

I. Responsible Employee. A "Responsible Employee" includes any employee of the constituent institution: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.

J. Sex or Gender-Based Discrimination. Sex or Gender-Based Discrimination is action that subjects students, employees or others to unequal treatment on the basis of their sex or gender.

K. Sexual Assault. "Sexual Assault" is an act of sexual contact on the body of another person, without that individual's consent; anal or vaginal penetration of another individual against that person's will and/or without that person's consent; any oral penetration of another individual by a sexual organ against that person's will and/or without that person's consent; or any insertion of another individual's genitals into one's mouth, anus, or vagina against that person's will and/or without that person's consent, no matter how slight the penetration or contact. Sexual assault includes forcing an unwilling person to touch another person sexually. Sexual assault may include any involuntary sexual act in which a person is threatened, coerced, or forced to engage against his or her will or while temporarily or permanently incapacitated. Sexual assault may be committed by a stranger or by a person known by the victim, including persons who are married or in a dating relationship with the victim. Sexual assault occurs when sexual acts are committed without consent, either by force, threat, coercion, or intimidation, or through the use of the victim's mental or physical helplessness or incapacitation, of which the assailant was aware or should have reasonably been aware. *See also* "Sexual Violence" in subsection N., below.

L. Sexual Exploitation. "Sexual Exploitation" is purposely or knowingly doing any of the following:

1. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity;
2. Allowing third parties to observe private sexual activity from a hidden location (*e.g.*, closet), or through electronic means (*e.g.*, Skype or live-streaming of images);
3. Engaging in voyeurism (*e.g.*, watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
4. Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
5. Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
6. Prostituting another person; or
7. Exposing another person to a sexually transmitted infection or virus without the other's knowledge.

M. Sexual- or Gender-Based Harassment.

1. "Sexual Harassment" is any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, or otherwise, when the conditions outlined in 2.a., and/or 2.b., below, are present.
2. "Gender-based Harassment" includes harassment based on gender, sexual orientation, or gender identity, which may include acts of aggression, intimidation, or hostility, whether verbal or nonverbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in a., and/or b., below, are present.
 - a. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any university programs and/or activities or is used as the basis for university decisions affecting the individual (often referred to as "quid pro quo" harassment); or
 - b. Such conduct creates a hostile environment. A "hostile environment" exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the university's education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the university will consider the totality of known circumstances, including, but not limited to:

- (1) The frequency, nature, and severity of the conduct;
- (2) Whether the conduct was physically threatening;
- (3) The effect of the conduct on the reporting party's mental or emotional state;
- (4) Whether the conduct was directed at more than one person;
- (5) Whether the conduct arose in the context of other discriminatory conduct;
- (6) Whether the conduct unreasonably interfered with the reporting party's educational or work performance and/or university programs or activities; and
- (7) Whether the conduct implicates concerns related to academic freedom or protected speech.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

N. Sexual Orientation. "Sexual Orientation" is the inclination or capacity to develop intimate emotional, spiritual, physical, or sexual relationships with people of the same sex or gender, a different sex or gender, or irrespective of sex or gender. Homosexuality, heterosexuality, and bisexuality are examples of sexual orientation.

O. Sexual Violence. "Sexual Violence" is a form of sexual harassment that consists of:

1. Sexual Assault, as defined in subsection J., above; and/or

2. Offensive Sexual Touching. "Offensive Sexual Touching" is the intentional sexual touching, without consent, of another person's intimate parts (including, but not limited to, genitalia, groin, breast, buttocks, or mouth), whether clothed or unclothed, or the intentional sexual touching, without consent, of another person with one's intimate parts, or, for purposes of sexual gratification, using force to cause another person to touch his/her own or another person's intimate parts. Offensive Sexual Touching may be committed using one's own body, a part thereof, or an object.

P. Stalking. "Stalking" is a course of conduct directed at a specific person that would cause a reasonable person to feel fear.

1. Course of conduct. A course of conduct is a pattern of behavior composed of two or more acts over a period of time.
2. Reasonable person. For purposes of this definition, a reasonable person is considered to be a person in similar circumstances.

CHAPTER V - OFFICERS OF THE UNIVERSITY

....

SECTION 502. CHANCELLORS OF CONSTITUENT INSTITUTIONS.

502 A. General Authority.

The administrative and executive head of each constituent institution shall be the chancellor, who shall exercise complete executive authority therein, subject to the direction of the president. The chancellor shall be responsible for carrying out policies of the Board of Governors and of the board of trustees. [See G.S. 116-34(a)]

....

502 D. Relation of the Chancellor to the Constituent Institution.

(1) Subject to policies established by the Board of Governors, the institutional board of trustees, or the president, the chancellor; shall be the leader of and the official spokesperson for the institution; shall promote the educational excellence and general development and welfare of the institution; shall define the scope of authority of faculties, councils, committees, and officers of the institution; and all projects, programs, and institutional reports to be undertaken on behalf of the institution shall be subject to the chancellor's authorization and approval.

(2) The chancellor shall be a member of all faculties and other academic bodies of the institution and shall have the right to preside over the deliberations of any legislative bodies of the faculties of the institution.

The chancellor shall be responsible for ensuring that there exists in the institution a faculty council or senate, a majority of whose members are elected by and from the members of the faculty. The general faculty, however, which shall include at least all full-time faculty and appropriate administrators, may function as the council or senate. The faculty shall be served by a chair elected either by the general faculty or by the council or senate. However, the chancellor may attend and preside over all meetings of the council or senate. The council or senate may advise the chancellor on any matters pertaining to the institution that are of interest and concern to the faculty.

In addition to ensuring the establishment of a council or senate, the chancellor shall ensure the establishment of appropriate procedures within the institution to provide members of the faculty the means to give advice with respect to questions of academic policy and institutional governance, with particular emphasis upon matters of curriculum, degree requirements, instructional standards, and grading criteria. The procedures for giving advice may be through the council or senate, standing or special committees or other consultative means.

(3) Subject to any policies or regulations of the Board of Governors or of the board of trustees, it shall be the duty of the chancellor to exercise full authority in the regulation of student affairs and student conduct and discipline. In the discharge of this duty, delegation of such authority may be made by the chancellor to faculty committees and to administrative or other officers of the institution, or to agencies of student government, in such manner and to such extent as may by the chancellor be deemed necessary and expedient. In the discharge of the chancellor's duty with respect to matters of student discipline, it shall be the duty of the chancellor to secure to every student the right to due process. Appeals from these disciplinary decisions are allowable only on the following grounds:

~~1(a)~~ A violation of due process; or

~~(b2)~~ A material deviation from the Minimum Substantive and Procedural Standards for Student Disciplinary Procedures, Section 700.4.1 ~~adopted by the Board of Governors of the UNC Policy Manual.~~

Where the sanction is suspension or expulsion, an appeal may be made to the board of trustees. No appeal to the president or Board of Governors is permitted. ~~When the sanction is expulsion, the final campus decision is appealable to the Board of Governors.~~

Policy on Minimum Substantive and Procedural Standards for Student Disciplinary Proceedings

The purpose of this policy is to establish legally supportable, fair, effective and efficient procedures for student disciplinary proceedings. The minimum standards for these proceedings are set out below. These minimum standards exceed the requirements of due process and therefore complying with requirements will also result in providing due process.

I. Elements of Policy. The two kinds of standards that must be followed are procedural standards and substantive standards.

II. Procedural. The procedural standards require notice and an opportunity for a hearing. The formality of these provisions will vary depending on the seriousness of the offense. (See sections V., and VI., below.)

III. Substantive. Substantive standards require that the decision reached be neither arbitrary nor capricious. Generally this means that there is some evidence to support the decision reached.

IV. Code of Student Conduct. Each constituent institution must adopt a code of student conduct that:

~~(a)A.~~ is applicable to all students;

~~(b)B.~~ defines what conduct is prohibited; and

~~(c)C.~~ specifies the types of sanctions that may be imposed for each category of prohibited conduct. Ranges of violations and ranges of sanctions are permissible.

Progressive sanctions for multiple violations are also legitimate. A periodic review of the code should be undertaken to ensure it remains in compliance with applicable laws, policies and regulations.

V. Requirements for Minor Violations. A minor violation is one for which the possible sanctions are less than suspension and expulsion.

A. Procedural Requirements.

1. A constituent institution may receive and, in its discretion, investigate reports of incidents of student misconduct. A student may be accused of a violation of the code of student conduct only by a designated university official with a formal charge initiating a disciplinary proceeding. A determination to initiate a disciplinary proceeding accusing a student of a violation of the code of student conduct should be made by a designated university official within a reasonable period of time after the constituent institution receives the report.

2. If a charge is to be pursued, it is then referred to a hearing official or body. The student must be notified in writing of the alleged violation(s), the referral and the hearing date. The hearing should not be scheduled for at least five (5) calendar days after the student receives the notice, unless the student agrees to an earlier hearing date. A committee member or the hearing official who has a conflict with, bias about or interest in the case should recuse himself. If the committee member or the hearing official refuses to recuse himself, a designated university official shall make the recusal decision.

3. The student may waive the hearing and accept a sanction proposed by a designated university official. The sanction must be within the ranges specified in accordance with section IV., above. The waiver and acceptance must be in writing and signed by the student.

4. If a hearing is held, it may occur as a meeting between the hearing committee/official and the student. It will be a closed meeting. The institution shall assure that students have the capability to present their evidence and defenses at the meeting or hearing. Witness testimony and documents may be received from both the designated university official and the student, who will both be present during all of the evidentiary presentation. At the end of the hearing, the committee/official will determine whether the designated university official has shown by a preponderance of the evidence that the student committed the offense charged. This determination must be based solely on the evidence presented at the hearing or meeting. The committee/official will also determine the appropriate sanction within the ranges specified in the definitions in Section IV, above.

5. The decision may be final or it may be a recommendation for a final decision by a designated university official. The final administrative decision must be reached within a specified amount of time, not to exceed ~~forty five (45)~~ calendar days after the date of the hearing. The final administrative decision must be transmitted to the student in writing within ~~ten (10)~~ calendar days of the date the decision is made, and it must contain a brief summary of the evidence upon which the decision is based.

6. Appeal rights must be specified in the decision letter. At least one level of administrative appeal must be permitted and the time in which to appeal and the permitted grounds for the appeal must be articulated. Further appellate opportunities shall be governed by ~~the Section 502 D.3., of The -Code [502-D(3)]~~ of the University of North Carolina.

B. Substantive Requirements. In each case there must be sufficient evidence supporting the decision and the sanction.

VI. Serious Violations. A serious violation is one for which the possible sanctions include suspension or expulsion.

A. Procedural Requirements:

1. A constituent institution may receive and, in its discretion, investigate reports of incidents of student misconduct. A student may be accused of a violation of the code of student conduct only by a designated university official with a formal charge initiating a disciplinary proceeding. A determination to initiate a disciplinary proceeding accusing a student of a violation of the code of student conduct should be made by a designated university official within a reasonable period of time after the constituent institution receives the report.
2. Written notice to the student must be provided if a decision is made to issue a formal charge against the student. The notice should specify the offense(s) charged, the possible sanctions, and a brief recitation of the factual allegations supporting the charge. For all charged offenses which could result in expulsion, the notice must include this possibility and must specify that expulsion precludes matriculation at any UNC constituent institution.
3. A formal charge is then referred to a hearing official or body. The student must be notified in writing of the referral. This notice may include a hearing date. The hearing date may not be scheduled for at least ~~ten (10)~~ calendar days after the student receives notice of the referral, unless the student agrees to an earlier hearing date. Reasonable extensions of time for either party to prepare for the hearing should be allowed.
4. If a hearing date is not set in the notice of the charge, written notice of the hearing date must be sent to be received by the student not less than five calendar days before the proceeding is scheduled for hearing.
5. The student may waive the hearing and accept a sanction proposed by a designated university official. The sanction must be within the ranges specified in accordance with Section IV., above. The designated university official must determine that the waiver and acceptance is voluntary and that the charge and sanction have factual support. The waiver and acceptance must be in writing and signed by the student and the designated university official.
6. Prior to the hearing, the student must be given the opportunity to review any written evidence that will be used at the hearing and to obtain a list of witnesses.
7. A committee member or hearing official who has a conflict with, bias about or an interest in a case must recuse himself. If the committee member refuses to recuse himself, a designated university official will make the recusal decision. The student must also be given the opportunity to challenge a committee member or hearing official on these grounds. The decision on the challenge must be made by the committee or official within five calendar days. If necessary, a substituted committee member or hearing official will be appointed.
8. The institution shall assure that students have the capability to present their evidence and defenses at the hearings. The method for assuring this capability may vary depending on the nature of the case and on the nature of the representation of the institution or the charging party. Each institution must have a policy delineating the participation or prohibition of attorneys and non-attorney advocates. Representation or

assistance by attorneys or non-attorney advocates at the hearing is neither required nor encouraged.

9. The hearing will be closed to the public, unless a constituent institution's policy provides otherwise.

10. A transcript or other verbatim record of the hearing (but not of the deliberations) will be prepared. The institution will be responsible for the costs of this record.

11. At the hearing, a designated university official must present sufficient witness and/or documentary evidence to establish the violation. The student must be given an opportunity to question this evidence, either by direct questions or inquiries transmitted through the committee or hearing official.

12. The student must be given the opportunity to present any witness or documentary evidence that he offers, provided that the evidence is relevant to the charge or other evidence presented and does not otherwise infringe the rights of other students.

13. At the conclusion of the evidence, the committee/official will determine whether the charging official has shown by a preponderance of the evidence, or by such higher standard as the institution may adopt, that the student committed the offense charged. This determination must be based solely on the evidence presented at the hearing. The committee or official will also determine the appropriate sanction within the ranges specified in accordance with section IV., above.

14. The decision may be final or it may be a recommendation for a final decision by a designated university official. The final administrative decision must be reached within a specified amount of time, not to exceed ~~forty-five (45)~~ calendar days after the hearing is completed. The final administrative decision must be transmitted in writing to the student within ten (10) calendar days of the date the decision is made and must contain a brief summary of the evidence upon which the decision is based.

15. A vice chancellor or ~~his~~ the vice chancellor's delegate must make the final administrative determination in all suspension cases. The delegation may be to a student committee or a student/employee committee.

16. The chancellor or a vice chancellor must make the final administrative decision in all expulsion cases.

17. Appeal rights must be specified in the final decision letter. At least one level of institutional appeal must be permitted, and the time limits in which to appeal and the permitted grounds for appeal must be articulated.

18. Further appeals shall be governed by ~~the~~ The Code of the University of North Carolina.

B. Substantive Requirements. In each case there must be sufficient evidence supporting the decision and the sanction.

VII. Special Cases

- A. If the formal charge is also the subject of pending criminal charges, the institution must, at a minimum, allow an attorney advisor to accompany the student to the hearing.
- B. Charges against multiple students involved in the same incident may be heard in a single case only if each student defendant consents to such a proceeding.
- C. In cases of alleged sexual misconduct, both parties are entitled to the same opportunities to have others present during a disciplinary proceeding.¹
- D. Victims of crimes of violence must be notified of the results of the disciplinary proceeding of the alleged assailant. "Results" means the name of the student assailant, the violation charged or committed, the essential findings supporting the conclusion that the violation was committed, the sanction if any is imposed, the duration of the sanction and the date the sanction was imposed.²
- E. When a student with a disability is charged with an offense, the institution will assure that all requirements of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act are met.

VIII. Other Matters

- A. Effective Date. The requirements of this policy shall be effective on the date of adoption of this policy by the Board of Governors and shall apply to all disciplinary proceedings initiated on or after that date.
- B. Relation to Federal and State Laws. The foregoing policy as adopted by the Board of Governors is meant to supplement, and does not purport to supplant or modify, those statutory enactments which may govern or relate to the subject matter of this policy.
- C. Regulations and Guidelines. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted from time to time by the president.

~~Effective Date: This policy applies to all offenses committed on or after August 23, 2013.~~

¹ The term "sexual misconduct" includes sexual assault, sexual battery, sexual coercion, rape, stalking, sexual violence and other forms of sexual misconduct. Furthermore, "both parties" refers specifically to the individual who claims to have been the victim of the sexual misconduct and the student who is alleged to have engaged in sexual misconduct.

² The disciplinary records of high school students at the North Carolina School of Science and Mathematics described in sections VII.C., and D., of this policy may not be disclosed without appropriate consent. [CFR 99.31(a)(13)]