

# **NCHERM MODEL SEXUAL MISCONDUCT POLICY**

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## **I. SEXUAL MISCONDUCT POLICY**

### **INTRODUCTION**

University believes in a zero tolerance policy for sexual misconduct. Members of the University community, guests and visitors have the right to be free from sexual violence. When an allegation of sexual misconduct is brought to the administration, and a respondent is found to have violated this policy, serious sanctions will be used to ensure that such actions are never repeated. All members of the community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University Sexual Misconduct Policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy has dual purposes. It serves as a measure for us to determine, after the fact, if behaviors trespass on community values. It also should serve as a guide for you on the expectations we have, preventatively, for sexual communication, sexual responsibility and sexual respect.

### **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT**

While the policy below is quite detailed and specific, the expectations of this community can be summarized in this simple paragraph. In order for individuals to engage in sexual activity of any type with each other, there must be clear consent. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is less clear than talking about what you want and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent. There is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy just as much as physically forcing someone into sex. Coercion happens when someone unreasonably pressures someone else for sex. When alcohol or other drugs are being used, someone will be considered unable to give valid consent if they cannot appreciate the who, what, when, where, why, or how of a sexual interaction. Individuals who consent to sex must be able to understand what they are doing. You will do well to keep in mind that under this policy, "No" always means "No," and "Yes" may not always mean "Yes."

### **OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS** **[optional]**

The university does not interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the university. For the personal protection of members of this community, faculty-student relationships are discouraged, generally. However, consensual romantic or sexual

relationships in which one party retains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities. This includes RAs and students over whom they have direct responsibility.

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

### **RISK REDUCTION TIPS**

If you find yourself in an uncomfortable sexual situation, these suggestions may help you to reduce your risk:

1. If you have limits, make them known before things go too far.
2. Tell a sexual aggressor “NO” clearly and loudly, like you mean it.
3. Try to extricate yourself from the physical presence of a sexual aggressor.
4. Grab someone nearby and ask for help.
5. Be responsible for your alcohol intake/drug use and realize that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
6. Watch out for your friends and ask that they watch out for you. A real friend will get in your face if you are about to make a mistake. Respect them if they do.

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

1. DON'T MAKE ASSUMPTIONS. About consent. About someone's sexual availability. About whether they are attracted to you. About how far you can go. About whether they are physically and mentally able to consent to you.
2. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
3. Mixed messages from your partner should be a clear indication that you should step back, defuse the sexual tension, and communicate better. Perhaps you are misreading them. Perhaps they haven't figured out how far they want to go

with you yet. You need to respect the timeline with which they are comfortable.

4. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
5. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
6. Understand that consent to some forms of sexual behavior does not necessarily imply consent to other forms of sexual behavior.
7. On this campus, silence and passivity cannot be interpreted by you as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Although in campus hearings legal ideas like guilt and innocence are not applicable, rest assured that University will never assume a student is in violation of university policy. In fact, campus hearings are conducted to take into account the totality of all evidence available, from all relevant sources.

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

## **SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:**

- 1. Sexual Harassment**
- 2. Non-Consensual Sexual Intercourse (or attempts to commit same)**
- 3. Non-Consensual Sexual Contact (or attempts to commit same)**
- 4. Sexual Exploitation**

### **1. SEXUAL HARASSMENT**

Gender-based verbal or physical conduct that unreasonably interferes with or deprives someone of educational access, benefits or opportunities.

#### Three Types of Sexual Harassment

A. Hostile Environment includes any situation in which there is harassing conduct that is sufficiently severe, pervasive/persistent and patently/objectively offensive that it alters the conditions of education or employment, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

[SECTION TO INCLUDE IN POLICY OR TRAINING MATERIALS] The determination of whether an environment is "hostile" must be based on all of the circumstances. These circumstances could include: [There is no reason this paragraph cannot be used elsewhere to address harassment on other protected classes, including race, color, ethnicity, nationality, age, weight, sexual orientation/preference, disability, etc.]

- 1) the frequency of the conduct;
- 2) the nature and severity of the conduct;
- 3) whether the conduct was physically threatening;
- 4) whether the conduct was humiliating;
- 5) the effect of the conduct on the alleged victim's mental or emotional state;
- 6) whether the conduct was directed at more than one person;
- 7) whether the conduct arose in the context of other discriminatory conduct;
- 8) whether the conduct unreasonably interfered with the alleged victim's educational or work performance; or
- 9) whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness;
- 10) whether the speech or conduct deserves the protections of academic freedom.

B. Quid pro quo sexual harassment exists when there are:

- 1) unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
- 2) submission to or rejection of such conduct results in adverse educational or employment action.

C. Retaliatory harassment is any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation of discrimination or sexual misconduct.

#### Examples of Harassment.

Not all workplace or educational conduct that may be described as "harassment" affects the terms, conditions or privileges of employment or education. For example, a mere utterance of an ethnic, gender-based or racial epithet which creates offensive feelings in an employee or student would not normally affect the terms and conditions of their employment or education.

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office, on the exterior of a residence hall door or on a computer monitor in a public space.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in discussions in class about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it.

*This sexual harassment policy incorporates language suggested by Tom Trager, Associate Counsel to the University of Colorado, Boulder, and Brett Sokolow, from NCHERM. The Consensual Relationships policy is adapted from Duke University.*

## 2. NON-CONSENSUAL SEXUAL INTERCOURSE:

Non-Consensual Sexual Intercourse is

- any sexual intercourse (anal, oral, or vaginal),
- however slight,
- with any object,
- by a man or woman upon a man or a woman,
- without consent\*.

## 3. NON-CONSENSUAL SEXUAL CONTACT:

Non-Consensual Sexual Contact is

- any intentional sexual touching,
- however slight,
- with any object,
- by a man or a woman upon a man or a woman,
- without consent\*.

### \*CONSENT DEFINED

Consent is informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity.

Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.

Previous relationships or consent cannot imply consent to future sexual acts.

Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

In order to give effective consent, one must be of legal age.

If you have sexual activity with someone you know to be--or should know to be--mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), you are in violation of this policy. Incapacitation is a state where one cannot

make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction.

- This policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called “date-rape” drug. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student for the purpose of inducing incapacity is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>
- Use of alcohol or other drugs will never function to excuse behavior that violates this policy.

Sexual activity includes:

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

#### 4. SEXUAL EXPLOITATION

Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- prostituting another student;
- non-consensual video or audio-taping of sexual activity;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in Peeping Tommerly;
- knowingly transmitting an STI or HIV to another student.

The requirements of this policy are blind to the sexual orientation or preference of individuals engaging in sexual activity. For reference to the pertinent state statutes on sex offenses, please see Appendix [?] on page...

#### SANCTION STATEMENT

- Any student found responsible for violating the policy on Non-Consensual Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging



from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.\*

- Any student found responsible for violating the policy on Non-Consensual Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.\*
- Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.\*

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

### EXAMPLES

- 1) Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never have done it but for Bill’s incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn’t want it, she could have left. **Bill is responsible for violating the university Non-Consensual Sexual Contact policy. It is likely that a university hearing board would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not effective when forced. Sex without effective consent is sexual misconduct.**
- 2) Jiang is a junior at the university. Beth is a sophomore. Jiang comes to Beth’s dorm room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and

begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

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

### **CONFIDENTIALITY AND REPORTING POLICY**

Different people on campus have different reporting responsibilities, and different abilities to maintain your confidentiality, depending on their roles at the university.

When consulting campus resources, victims should be aware of confidentiality and mandatory reporting, in order to make informed choices. On campus, some resources may maintain your complete confidentiality, offering you options and advice without any obligation to tell anyone, unless you want them to. Other resources are expressly there for you to report crimes and policy violations, and they will take action when you

report your victimization to them. Most resources on campus fall in the middle of these two extremes. Neither the university nor the law requires them to divulge private information that you share with them, except in extremely rare circumstances, described below. You may seek assistance from them without starting a chain of events that takes things out of your control, or violates your privacy.

### **To Report Confidentially**

If you desire that details of the incident be kept confidential, you should speak with on-campus counselors, campus health service providers or off-campus rape crisis resources, who will maintain confidentiality. Campus counselors are available to help you free of charge, and can be seen on an emergency basis. In addition, you may speak on and off-campus with members of the clergy and chaplains, who will also keep reports made to them confidential.

### **Quasi-Confidential Reporting**

You can seek advice from certain resources who are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct, such as RAs, faculty members, advisors to student organizations, career services staff, admissions officers, student activities personnel, and many others. If you are unsure of someone's duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can help you best. Some of these resources, such as RAs, are instructed to share incident reports with their supervisors, but they do not share any personally identifiable information about your report unless you give permission, except in the rare event that the incident reveals a need to protect you or other members of the community. If your personally identifiable information is shared, it will be shared with as few people as possible, and all efforts will be made to protect your confidentiality to the greatest extent.

### **Non-Confidential Reporting Options**

You are encouraged to speak to officials of the institution to make formal reports of incidents (deans, vice presidents, or other administrators with supervisory responsibilities, campus security, and human resources). You have the right and can expect to have incidents of sexual misconduct to be taken seriously by the university when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting does not mean that your report won't be confidential, but it does mean that people who need to know will be told, and information will be shared as necessary with investigators, witnesses, and the accused. The circle of people will be kept as tight as possible, to preserve your rights and privacy.

[OPTIONAL ADDITIONAL INFORMATION]:

### **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes. All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given), for publication in the annual Campus Security Report. This Report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities.

### **Federal Timely Warning Reporting Obligations**

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

### **QUESTIONS AND ANSWERS**

Here are some of the most commonly asked questions regarding University's sexual misconduct policy and procedures.

- Does the complaint remain confidential?

The privacy of all parties to a complaint of sexual misconduct must be strictly observed, except insofar as it interferes with the university's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the complainant or the accused student may lead to conduct action by the university.

In all complaints of sexual misconduct, the complainant will be informed of the outcome. In some instances, the administration also may choose to make a brief announcement of the nature of the violation and the action taken, using no names. Certain university administrators are informed on a confidential basis (e.g., the

President of the university, Dean of Students, Director of Security). If you report an act of alleged sexual misconduct to a conduct officer of the university and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the university is legally required to notify law enforcement authorities. The university also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

- Will my parents be told?

No, not unless you tell them. Whether you are the complainant or the accused, University's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, or in a life-threatening situation, or if an accused student has signed the permission slip at registration which allows such communication. The permission slip states that "University may inform this parent in the unlikely event that you are threatened with suspension from the university due to disciplinary or academic deficiency." [?]

- Will I have to confront the perpetrator?

Yes, if you file a formal complaint. Sexual misconduct is a serious offense and the accused has the right to confront the accuser. However, the university does provide options for allowing confrontation without direct contact, including closed-circuit testimony, using a room divider or using separate hearing rooms.

- Do I have to name the perpetrator?

Yes, if you want formal disciplinary action to be taken against the alleged perpetrator. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy below to better understand the university's legal obligations depending on what information you share with different university officials).

- What do I do if I am accused of sexual misconduct?

DO NOT contact the alleged victim. You may immediately want to contact someone in the campus community who can act as your advisor. You may also contact the Dean of Students, who can explain the university's procedures for dealing with sexual misconduct complaints. You may also want to talk to a confidential counselor at the university counseling center.

- Will I (as a victim) have to pay for counseling/or medical care? **[to be addressed, based on university policy, local hospital policy, and state victim assistance provisions. Be sure to note if victim ineligible for state assistance if s/he was engaged in illegal activity during the assault.]**

- What do I do about legal advice?

Victims of criminal sexual assault need not retain a private attorney because legal issues will be handled through a representative from the District Attorney's office. You may want to retain an attorney if you are the accused or are considering filing a civil action against the alleged perpetrator.

- What about changing residence hall rooms?

If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is the university's policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused to move, and believe that you have been the victim of sexual misconduct, you must be willing to pursue formal University conduct action. The alleged perpetrator will be moved immediately, and the permanence of this action will be based upon the outcome of the conduct hearing. Other accommodations available to you might include:

- Assistance from university support staff in completing the relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Exam (paper, assignment) rescheduling;
- Taking an incomplete in a class;
- Transferring class sections;
- Temporary withdrawal;
- Alternative course completion options.

- What do I do about preserving evidence of a sexual assault?

Physical evidence of a criminal sexual assault must be collected within 72 hours. If you believe you have been a victim of a criminal sexual assault, you should go to [?] Hospital Emergency Room (**address**), before washing yourself or your clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at Hospital is on call 24 hours a day, 7 days a week (call the Emergency Room at ???-???? if you first want to speak to the nurse; ER will refer you). A victim advocate (call ???-????) from the university can also accompany you to Hospital and university Security can provide transportation. If you go to the hospital, local police will be called, but you are not obligated to talk to the police or to prosecute. The exam will help to keep that option open for you, should you decide later to exercise it.

The hospital staff will collect evidence, check for injuries, and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you

want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

- Will a student be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?

No. The severity of the infraction will determine the nature of the university's response, but whenever possible the university will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and the university does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

- Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct complaint?

The use of alcohol and/or drugs by either party will not diminish the accused student's responsibility. On the other hand, alcohol and/or drug use is likely to affect the complainant's memory and, therefore, may affect the outcome of the complaint. A person bringing complaints of sexual misconduct must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his/her complaint. If the complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the accused without further corroborating information.

- Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present complaint.

- What should I do if I am uncertain about what happened?

If you believe that you have experienced a non-consensual sexual contact, but are unsure of whether it was a violation of the university's sexual misconduct policy, you should contact [?] (???-???). The university provides advisors who can help you to define and clarify the event(s), and advise you of your options.

## **II. Special Provisions**

### **a. Attempted violations**

In most circumstances, University will treat attempts to commit any of the violations listed in the *Student Code of Conduct* as if those attempts had been completed.

### **b. University as Complainant**

As necessary, University reserves the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the victim of misconduct.

c. False Reports

University will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

d. Immunity for Victims

The University community encourages the reporting of conduct code violations and crimes by victims. Sometimes, victims are hesitant to report to university officials because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to university officials. To encourage reporting, University pursues a policy of offering victims of crimes amnesty from policy violations related to the incident. [OR: The University community encourages the reporting of Conduct Code violations, especially sexual misconduct. Sometimes, victims are hesitant to report to university officials because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many victims as possible choose to report to university officials. To encourage reporting, University pursues a policy of offering victims of sexual misconduct limited immunity from being charged for policy violations related to the sexual misconduct incident. While violations cannot be completely overlooked, the university will provide educational options rather than punishment, in such cases].

e. Good Samaritan

The welfare of students in our community is of paramount importance. At times, students on and off-campus may need assistance. University encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, as student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Campus Police). University pursues a policy of limited immunity for students who offer help to others in need. While policy violations cannot be overlooked, the university will provide educational options, rather than punishment, to those who offer their assistance to others in need.

f. Parental Notification



University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not-dependent, University will contact parents/guardians to inform them of situations in which there is a health and/or safety risk. University also reserves the right to designate which university officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act.

h. Notification of Outcomes

The outcome of a campus hearing is part of the educational record of the accused student, and is protected from release under a federal law, FERPA. However, University observes the legal exceptions as follows:

- 1) Complainants in non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and relationship violence incidents have an absolute right to be informed of the outcome and sanctions of the hearing, in writing, without condition or limitation.
- 2) Students who bring any sort of sexual misconduct complaint against faculty or staff may be informed of the outcome and sanction, because FERPA does not apply.
- 3) The university may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a university policy that is a "crime of violence," including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. The university will release this information to the complainant in any of these offenses regardless of the outcome.

i. Alternative Testimony Options

For sexual misconduct complaints, and other complaints of a sensitive nature, whether the alleged victim is serving as the complainant or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged victim to testify from another room via closed circuit. While these options are intended to help make the alleged victim more comfortable, they are not intended to work to the disadvantage of the accused student.

j. Past Sexual History/Character

The past sexual history or sexual character of a party will not be admissible by the other party in hearings unless such information is determined to be highly relevant by the Chair. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response

or a subsequent written request, and must be reviewed in advance of the hearing by the Director of Student Conduct. While previous conduct violations by the accused student are not generally admissible as information about the present alleged violation, the Director of Student Conduct may supply previous complaint information to the conduct board, or may consider it him/herself if s/he is hearing the complaint, only if:

- 1) The accused was previously found to be responsible;
- 2) The previous incident was substantially similar to the present allegation;
- 3) Information indicates a pattern of behavior and substantial conformity with that pattern by the accused student.

### **STATEMENT OF THE RIGHTS OF THE ALLEGED VICTIM**

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to university administrators;
- The right to be treated with respect by university officials;
- The right of both accuser and accused to have the same opportunity to have others present (in support or advisory roles) during a campus disciplinary hearing;
- The right not to be discouraged by university officials from reporting an assault to both on-campus and off-campus authorities;
- The right to be informed of the outcome and sanction of any disciplinary hearing involving sexual assault, usually within 24 hours of the end of the conduct hearing;
- The right to be informed by university officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire;
- The right to be notified of available counseling, mental health or student services for victims of sexual assault, both on campus and in the community;
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available (no formal complaint, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
  - Change of an on-campus student's housing to a different on-campus location;
  - Assistance from university support staff in completing the relocation;

- Arranging to dissolve a housing contract and pro-rating a refund;
  - Exam (paper, assignment) rescheduling;
  - Taking an incomplete in a class;
  - Transferring class sections;
  - Temporary withdrawal;
  - Alternative course completion options.
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
  - The right not to have any complaint of sexual assault mediated (as opposed to adjudicated);
  - The right to make a victim-impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
  - The right to a campus restraining order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others;
  - The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus law enforcement.
  - The right to appeal the finding and sanction of the conduct body, in accordance with the standards for appeal established by the institution;
  - The right to review all documentary evidence available regarding the complaint, subject to the confidentiality limitations imposed by state and federal law, at least 48 hours prior to the hearing;
  - The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);
  - The right to preservation of confidentiality, to the extent possible and allowed by law;
  - The right to a hearing closed to the public;
  - The right to petition that any member of the conduct body be removed on the basis of demonstrated bias;

- The right to bring a victim advocate or advisor to all phases of the investigation and campus conduct proceeding;
- The right to give testimony in a campus hearing by means other than being in the same room with the accused student (closed circuit live audio/video is the recommended method);
- The right to present relevant witnesses to the campus conduct body, including expert witnesses;
- The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;
- The right to have the university compel the presence of student, faculty and staff witnesses, and the right to ask questions, directly or indirectly, of witnesses (including the accused), and the right to challenge documentary evidence.
- The right to be present for all testimony given and evidence presented before the conduct body;
- The right to have complaints heard by conduct officers who have received annual sexual misconduct adjudication training;
- The right to a conduct panel comprised of representatives of both genders;
- The right to have university policies and procedures followed without material deviation;
- The right to be informed in advance of any public release of information regarding the complaint;
- The right not to have released to the public any personal information about the complainant, without his or her consent.

#### **STATEMENT OF THE ACCUSED'S RIGHTS**

The rights of accused students should also be prominently indicated. These should include, among others particular to your university:

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to university administrators against the accused student;

- The right to be treated with respect by university officials;
- The right to be informed of and have access to campus resources for medical, counseling, and advisory services;
- The right to be fully informed of the nature, rules and procedures of the campus conduct process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;
- The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation;
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right to make an impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
- The right to appeal the finding and sanction of the conduct body, in accordance with the standards for appeal established by the institution;
- The right to review all documentary evidence available regarding the complaint, subject to the confidentiality limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);
- The right to a hearing closed to the public;
- The right to petition that any member of the conduct body be removed on the basis of bias;
- The right to have the university compel the presence of student, faculty and staff witnesses, and the right to ask questions, directly or indirectly, of witnesses, and the right to challenge documentary evidence.
- The right to have complaints heard by conduct officers who have received annual sexual misconduct adjudication training;

- The right to have university policies and procedures followed without material deviation;
- The right to have an advisor or advocate to accompany and assist in the campus hearing process. This advisor can be anyone, [optional: including an attorney (provided at the accused student's own cost)], but the advisor may not take part directly in the hearing itself, though they may communicate with the accused student as necessary;
- The right to a fundamentally fair hearing;
- The right to a campus conduct outcome based solely on evidence presented during the conduct process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to written notice of the outcome and sanction of the hearing;
- The right to a conduct panel comprised of representatives of both genders;
- The right to be informed in advance, when possible, of any public release of information regarding the complaint.