



## **SEXUAL MISCONDUCT**

### **Information**

Title IX of the Education Amendments of 1972 states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Cape Fear Community College is committed to providing a learning, and working environment that promotes respect, responsibility, communication, collaboration, critical thinking, and accountability in an environment free of sexual misconduct and discrimination. Sexual discrimination violates an individual's fundamental rights and personal dignity.

Cape Fear Community College considers sexual discrimination in all its forms to be a serious offense. This plan refers to all forms of sexual discrimination, including: discrimination against pregnant and parenting students, sexual harassment, sexual assault, and sexual violence by employees, students, or third parties. (Title 20 U.S.C. Sections 1681-1688)

Cape Fear Community College has a responsibility to ensure compliance by demonstrating that our education programs and other activities are operated in a manner consistent with Title IX regulations and provisions. Throughout the year there are several programs offered to the Cape Fear Community College community that provide knowledge to help prevent, avoid and respond to sexual misconduct.

### **Procedures**

If you feel you have been subjected to sexual harassment or discrimination, you should seek assistance as soon as possible. Please review the **Sexual or Gender Misconduct Plan** and the related **Plan Explanations** listed below.

### **How Can We Help**

Our plan helps to ensure the Cape Fear Community College's community is free from discrimination based on sex or gender behavior. We are here to help assist you in an effective and efficient manner. If you feel you are or have experienced sexual misconduct or discrimination, the most important thing you can do is to get help.

### **Who Should I Contact**

If you think you have been a victim of sex or gender discrimination, or if you are aware of its existence in any of our education programs or activities, or you have any questions about the sexual or gender misconduct policy, you can get help from any of the offices/individuals below:

- **Faculty or Staff and Employment Applicants:** Contact the Chief Human Resource Officer your supervisor, or Campus Police/Safety;
- **Students:** Contact the Dean of Student Affairs who is the College's Title IX Coordinator, any Student Services Director, Counseling Staff, Athletic Director, or Campus Police/Safety;
- **Campus Visitors:** Contact the Campus Police/Safety.



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### **SEXUAL/GENDER MISCONDUCT PLAN & PLAN EXPECTATIONS**

#### **I. Plan Statement**

Members of the Cape Fear Community College's community, guests, and visitors have the right to be free from sexual violence. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. Cape Fear Community College believes in zero tolerance regarding sexual or gender-based misconduct. When an allegation of misconduct is brought to an appropriate administrator's attention, and a respondent is found to have violated this plan, serious sanctions will be imposed to reasonably ensure that such actions are never repeated.

This plan has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This plan is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

The college 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 class schedule, interim suspension from campus pending a hearing, and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses and the college reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The college will consider the concerns and rights of both the complainant and the person accused of sexual misconduct.

In campus hearings, legal terms like "guilt", "innocence", and "burden of proof" are not applicable, but the College never assumes a student is in violation of college policy. Campus hearings are conducted to take into account the totality of all evidence available, from all relevant sources.

#### **II. Expectations with Respect to Physical Sexual Misconduct**

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you do and do not want sexually. Consent to one form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission--cannot be assumed to show consent.

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

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



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### **Expectations with Respect to Consensual Relationships**

Romantic or sexual relationships between individuals in unequal positions (such as teacher and student, supervisor and employee) 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 may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks.

### **Sexual Violence – Risk Reduction Tips**

Below is a list of suggestions to help avoid and reduce the risk of experiencing a non-consensual sexual act:

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

### **Definitions**

#### **Sexual Misconduct**

Sexual misconduct, including sexual assault, is defined as deliberate contact of a sexual nature without the other person's consent. Sexual misconduct may vary in its severity and consists of a range of behaviors or attempted behaviors that may be grounds for student conduct action under college policy. These behaviors, all of which constitute sexual misconduct include:

1. **Non-consensual sexual contact:** Non-consensual sexual contact is any sexual touching, with any object, by a man or a woman upon another person without consent or making any person touch you or them in a sexual manner. It is defined as engaging in any sexual contact other than intercourse with another person without that person's consent and/or cognizance. It includes any non-consensual sexual contact, including any improper touching of intimate body parts. It also includes the non-consensual removal of another's clothing, indecent contact (i.e., the unwanted touching of intimate body parts including, but not limited to; genitals, buttocks, groin, or breasts) or causing another to have indecent contact with them.
2. **Non-consensual intercourse:** Non-consensual intercourse is any sexual intercourse (anal, oral or vaginal), with any object, by a man or woman upon another person without consent. It is defined as engaging in sexual intercourse (oral, anal or vaginal) with another person without that person's consent and/or cognizance. Non-consensual intercourse may be accomplished by expressly or implicitly forcing or coercing another person to have sexual intercourse against his/her will, including the use or threat of physical force, or any behavior that is designed to intimidate and induce fear in another person. Non-consensual intercourse can also occur when another person is under the influence of alcohol or other drugs, is undergoing physical or emotional trauma, is less than 17 years of age, or is otherwise incapable of denying or giving consent (for example, when an individual is in an unconscious or semi-conscious state).



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3. **Sexual Exploitation:** Sexual exploitation occurs when a person takes non-consensual or sexual advantage of another or 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 the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:
- prostituting another person
  - 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 voyeurism
  - knowingly transmitting an STD or HIV to another

### **Sex Discrimination**

Sex discrimination includes all forms of sexual harassment, sexual misconduct, and sexual violence by employees, students, or third parties against employees, students, or others on campus. Sex discrimination also includes stalking, dating violence and domestic violence. Students, college employees, and third parties are prohibited from harassing other students and/or employees whether or not the incidents of harassment occur on the college campus and whether or not the incidents occur during working hours.

### **Sexual and Gender-based Harassment**

Sexual harassment is unwanted sexual advances, requests for sexual favors, or visual, verbal, or physical conduct of a sexual nature when: (1) submission to such conduct is made either implicitly or explicitly, as a term or condition of an individual's employment or academic status; (2) submission to or rejection of such conduct is used as a basis for employment or education

decisions affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with a student's or employee's work performance or creating an intimidating, hostile, or offensive working, educational, or living environment. While sexual harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct include:

1. Promising, directly or indirectly, a reward to an individual if the person complies with a sexually oriented request.
2. Threatening, directly or indirectly, retaliation against an individual, if the person refuses to comply with a sexually oriented request.
3. Denying, directly or indirectly, an individual employment or education related opportunity, if the individual refuses to comply with a sexually oriented request.
4. Engaging in sexually suggestive conversation or physical contact or touching another individual.
5. Displaying pornographic or sexually oriented materials.
6. Engaging in indecent exposure.
7. Making sexual or romantic advances toward an individual and persisting despite the individual's rejection of the advances.
8. Physical conduct such as assault, touching, or blocking normal movement.
9. Retaliation for making harassment reports or threatening to report harassment.
10. Gender-based harassment is also prohibited. It includes, but is not limited to; acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.



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Sexual harassment can involve males or females being harassed by members of either sex. Although sexual harassment sometimes involves a person in a greater position of authority as the harasser, individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment. Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered separately would not rise to the level of harassment.

### **Coercion**

Coercing someone into sexual activity violates this policy as much as physically forcing someone into sex. Coercion exists when a sexual initiator engages in sexually pressuring and/or oppressive behavior that violates the norms of the community and that application of pressure or oppression causes another individual to engage in unwanted sexual behavior. Coercion may be differentiated from seduction by the repetition of the coercive activity beyond what is reasonable, the degree of pressure applied, environmental factors such as isolation and the initiator's knowledge that the pressure is unwanted.

### **Consent**

Effective consent is the basis of the analysis applied to unwelcome sexual contact. Lack of consent is the critical factor in any incident of sexual misconduct and sexual violence.

1. Consent is informed, freely and actively given, and requires clear communication between all persons involved in the sexual encounter
2. Consent is active, not passive. Consent can be communicated verbally or by actions. But in whatever way consent is communicated, it must be mutually understandable. Silence, in and of itself, cannot be interpreted as consent.
3. It is the responsibility of the initiator of sexual contact to make sure they understand fully what the person with whom they are involved wants and does not want sexually.
4. Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
5. Previous relationships or consent does not imply consent to future sexual acts.
6. 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.
7. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand who, what, when, where, why and how of their sexual interaction.
8. Effective consent cannot be given by minors, mentally disabled individuals or persons incapacitated as a result of drugs or alcohol.
9. Use of alcohol or other drugs will never function to excuse behavior that violates this policy. When alcohol or other drugs are being used, someone will be considered unable to give valid consent if they cannot appreciate who, what, when where, why and how of a sexual interaction. Individuals who consent to sex must be able to understand what they are doing.
10. 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.
11. 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, Ketamine, GHB, Burundanga, etc. is prohibited and administering one of these drugs to another person 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/>.





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**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. DO NOT MAKE ASSUMPTIONS about consent, about someone's sexual availability, about whether they are attracted to you, about how far you can go or about whether they are physically or 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. Understand that consent to some forms of sexual behavior does not necessarily imply the consent to other forms of sexual behavior.
4. 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.
5. Do not take advantage of someone's drunkenness, impaired or drugged state, even if they did it to themselves.
6. Realize that your potential partner could be intimidated by, or fearful of you.
7. Silence and passivity cannot be interpreted by you as an indication of consent. Read your partner carefully, paying attention to verbal and non-verbal communication.

### **Retaliation**

The college strictly prohibits retaliation against any person for reporting, testifying, assisting or participating, in any manner, in any investigation or proceeding involving allegations of discrimination or harassment. Any person who violates this policy will be subject to discipline, up to and including termination if they are an employee, and/or expulsion if they are a student.

- Retaliation is any action by any person that is perceived as: intimidating, hostile, harassing, a form of retribution, or violence that occurs in connection to the making and follow-up of the report.

### **Dating Violence**

The term "dating violence" means violence committed by a person (a) who is or has been in a social relationship of romantic or intimate nature with the complainant; and (b) where the existence of such a relationship shall be determined based on a consideration of the following: the length of relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

### **Domestic Violence**

The term "domestic violence" includes felony or misdemeanor crimes committed by the current or former spouse of the complainant, by a person whom the complainant has a child with, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from the person's acts under the domestic or family violence laws of the jurisdiction.

### **Stalking**

The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.