

Title: Sexual Harassment Policy

Purpose: The purpose of this policy is to set forth the University's procedures for preventing sexual harassment and for investigating and resolving allegations of sexual harassment, and also to ensure compliance with Title VII of the Civil Rights Act of 1964, as amended, and with Chapter 126 of the North Carolina General Statutes.

Scope: This policy applies to all applicants for employment, to all applicants for admission to University programs, and to all officers and employees of the University, all students, and all persons who serve the University as its agents and are under the control of the University, and to all individuals who teach, conduct business or participate in activities at the University. University contractors are also subject to this policy.

Policy:

Introduction

Sexual harassment and discrimination are illegal and endanger the environment of civility and mutual respect that must prevail if the University is to fulfill its mission. The University of North Carolina at Asheville is committed to providing and promoting an atmosphere in which employees can realize their maximum potential in the workplace and students can engage fully in the learning process. Toward this end, all members of the University community must understand that sexual harassment, sexual discrimination and sexual exploitation of professional relationships violate the University's policy and will not be tolerated. The University will take every step to resolve grievances promptly. Any act of reprisal, interference, or any other form of retaliation, whether direct or indirect, against an individual for raising concerns covered by this policy are also violations of this policy and are prohibited..

Sexual Harassment Definitions (See Title 29 Code of Federal Regulations 1604.11)

Two categories of sexual harassment between members of the opposite or same sex are recognized:

- A. Quid Pro Quo - Sexual harassment presented as a "bargain" (quid pro quo). Unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature by one in a superior position constitutes "bargained-for sexual harassment" when submission by another is made either an explicit or implicit term or condition of employment or of academic standing. In this case, apparent consent of the submitting party is less relevant than the extent to which the sexual

conduct is unwelcome. As defined here, “bargained-for sexual harassment” normally arises in the context of an authority relationship. This relationship may be direct as in the case of a supervisor and subordinate or teacher and student or it may be indirect when the harasser has the power to direct others who have authority over the victim.

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

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

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

Penalties

Penalties will be determined on the basis of the facts of each case and the extent of harm to the University’s interests, as well as any University record indicating previous wrong doing by the accused person. Possible penalties are described in UNC Asheville’s SPA Disciplinary Actions Policy, the faculty handbook, the student handbook, the UNC Policy Manual, and the North Carolina Office of State Personnel Manual.

Anti-Retaliation Assurance

This policy seeks to encourage individuals to express freely, responsibly, and in an orderly way opinions and feelings about any problem or complaint of sexual harassment. Any act of retaliation against a complainant or witness is prohibited

and will result in appropriate disciplinary action in accordance with disciplinary measures defined by applicable state or university disciplinary policies.

Improper Complaints

This policy shall not be used to bring frivolous or malicious complaints against students or employees. A person who brings a frivolous or malicious complaint will be subject to disciplinary action.

Confidentiality

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

Responsibility for Reporting

Any University employee who has direct knowledge of sexual harassment that has occurred is obligated to inform the University’s Director of Employee Relations/Affirmative Officer immediately. Not to do so may result in serious consequences for the University, will be considered a breach of responsibility and may be grounds for disciplinary action.

Education and Outreach

To aid the University in achieving its mission by preventing sexual harassment, the Sexual Harassment Advisory Committee will assist the Director of Employee Relations and other University officials in their efforts to train, educate and advise members of the University community about sexual harassment so that the University will continue to be a safe and productive place to work and to learn.

Procedures: The purpose of these procedures is to provide a prompt and fair resolution of problems and to preserve the due process rights of all involved, including the right to receive notice of complaints and to have an opportunity for an impartial investigation. These procedures also are created to provide for discipline of violators of the University’s Sexual Harassment Policy. If necessary, however, the University’s administration may take immediate and reasonable action to stop harassment and is not limited to the process provided herein.

I. Filing a Complaint

Complaints of violations of the University's Sexual Harassment Policy will be accepted in writing or orally, however formal complaints (see B below) must be received in written form. Complaints will be taken seriously and investigated. Anyone who has observed sexual harassment should report it to his or her immediate supervisor, a department head/chair, vice chancellor or a sexual harassment advisory committee member (a current list of committee members may be found online at:

http://www.unca.edu/service_committees/membership.asp). The ability to make a complaint is not limited to those who are the direct targets of the harassment.

A. Informal Resolution

Complaints of harassment addressed through the informal resolution process may be addressed through a variety of actions, including but not limited to the following:

1. The employee may discuss the concern(s) and the desired resolution with the alleged harasser, with or without the facilitation or presence of an employee relations representative or a supervisor.
2. The employee may address the alleged harasser in writing regarding the concern(s) and the desired resolution with or without the facilitation or presence of an employee relations representative or a supervisor.
3. The employee may ask an employee relations representative to notify the alleged harasser of the concern(s) and the desired resolution.

If the conduct has not stopped after the complainant's communication or if the complainant does not wish to make the initial contact with the harasser, he/she may contact the University's Director of Employee Relations or his/her immediate supervisor, a department head/chair, vice chancellor, or a member of the sexual harassment advisory committee (a current list of committee members may be found online at:

http://www.unca.edu/service_committees/membership.asp). The person to whom the report is made shall report it immediately to the University's Director of Employee Relations.

Advisory Note: Complaints by or about students must be presented to the Office of the Dean of Students. The Dean or Students, or designee, will work with Employee Relations on any cases involving harassment of a student by a UNC Asheville employee. In an instance of student-initiated harassment, the Dean of Students, or designee, shall investigate and take appropriate

disciplinary action commensurate with the severity and/or frequency of the conduct. Discipline resulting from harassment by a student will be taken in accordance with the procedures provided in the Student Code of Conduct.

B. Formal Resolution

Employees who have a complaint of harassment may use the formal grievance procedures in accordance with UNC Asheville's Unlawful Workplace Harassment policy. To use this procedure, the employee must submit a written complaint to Human Resources within 30 calendar days of the alleged harassing action. **This is the required procedure for SPA employees who want to maintain their appeal rights to the State Personnel Commission.**

SPA employees who do not submit a written complaint to Human Resources within 30 calendar days may still utilize the informal procedures described in Section I.A. for resolving their concern; however, such individuals will not have the option of later appealing to the State Personnel Commission or using any University appeal procedure.

II. Investigation

Confidentiality shall be maintained to the greatest extent possible within the requirements of conducting reasonable investigations. Only those who have a need to know will or may find the identity of the parties.

Once a complaint is made to a University official or employee, the official or employee will forward the complaint to the Director of Employee Relations. He/she will maintain all records related to such cases separately from the University personnel files. Complaints will be investigated promptly and impartially.

The Director of Employee Relations may conduct the investigation or, if he/she deems it appropriate, will forward the complaint to an investigatory team for investigation and recommended action. The team is authorized to review, investigate and advise with respect to the adjustment of complaints related to sexual harassment filed by any member of the University community.

The investigatory team is authorized to meet with the complainant, the accused, and any witnesses in order to determine facts regarding the

allegation. Meetings with the parties to the complaint should be conducted individually and should not take the form of a hearing. These meetings may be done by the team as a whole or by members designated by the chair.

An accurate record of all meetings and interviews shall be made by the investigatory team. These records shall be maintained for a minimum of three years and for as long as any of the parties are associated with the University. A final report of the findings of the team shall be made available under the supervision of the Director of Employee Relations to all parties to the complaint upon receipt, verbally or in writing, of a request from that party. .

Upon completion of its review, the team shall make a report to the supervisor of the accused. The report shall consist of a summary of findings, including a statement of the charges, the evidence presented and a determination as to whether or not the complaint rises to the level of sexual harassment as defined by federal law. The supervisor will determine the appropriate action, in consultation with the Director of Employee Relations.

All reasonable attempts will be made to complete this entire process in a timely manner. Complaints shall be resolved within sixty (60) days from the date the complaint is received by the Director of Employee Relations. The Committee shall provide a written response to the complainant when it has been determined what action, if any, will result from the complaint.

Advisory Note: After the agency's 60 calendar days (or less, if waived in writing), if the complainant is an SPA employee and the complaint has been filed in accordance with the Unlawful Workplace Harassment policy, the complainant may appeal directly to the Office of Administrative Hearings and the State Personnel Commission within the next 30 calendar days if he/she is not satisfied with the agency's response to the complaint.

III. Appeals

Any current or former State employee who feels he/she has been sexually harassed in violation of UNC Asheville and N.C. General Statute 126-16 may file a grievance through the UNC Asheville grievance procedures (as applicable to SPA, EPA Non-Faculty or EPA faculty.)

Applicants for positions governed by Chapter 126 of the N.C. General Statutes who believe that they have been sexually harassed may file grievances pursuant to that chapter of the General Statutes. Such grievances must be in compliance with the procedures set forth in UNC Asheville policies and with the North Carolina Office of State Personnel Manual.

Sexual harassment is a violation of Title VII of the Civil Rights Act of 1964. Employees or applicants may also choose to file a complaint of sexual harassment with the Equal Employment Opportunity Commission.

Additional References: UNC Code [Appendix I.C. (Personnel) and XII (Students)], Unlawful Workplace Harassment Policy

Related Policies: Improper Relationships between Students and Employees Policy, Unlawful Workplace Harassment Policy

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