

**UNC Charlotte  
University Policy 406**

**The Code of Student Responsibility**

**As amended, effective for violations occurring on or after August 18, 2014**

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## Preface

This University Policy 406, The Code of Student Responsibility (“this Code”) fulfills the duty of the Chancellor to regulate matters of student conduct in the University community. University Policy 407, The Code of Student Academic Integrity governs student behavior relating to academic work. All UNC Charlotte Students are expected to be familiar with both Codes and to conduct themselves in accordance with these requirements.

All Student inquiries concerning these Policies should be directed initially to the Associate Dean and Director of Student Conduct and Outreach (“Director of Student Conduct”) in the Dean of Students Office.

The current version of either policy, which may be revised from time to time, is available from the Dean of Students Office or online at <http://legal.uncc.edu/policies/up-406> (Code of Student Responsibility) and <http://legal.uncc.edu/policies/up-407> (Code of Student Academic Integrity).

Special Note: Any Student needing assistance because of a disability may contact the Office of Disability Services at 704-687-0040.

## Chapter 1. Philosophy and Purpose

The University of North Carolina at Charlotte strives to assist students in their development by creating a community that values scholarship, integrity, respect, accountability, dignity, honor, compassion, character, and nobility. The purposes of the student conduct process are to:

1. Maintain an environment that supports and enhances the educational purpose of the University;
2. Protect the health, safety, welfare, and property of all persons in the University community;
3. Encourage appropriate standards of individual and group responsibility to the University community; and
4. Foster the personal, social, and ethical development of members of the University community.

In accordance with The University of North Carolina Board of Governors' Policy 700.4.2:

1. The University embraces and strives to uphold the freedoms of expression and speech guaranteed by the First Amendment of the U.S. Constitution and the North Carolina Constitution. The University has the right under appropriate circumstances to regulate the time, place, and manner of exercising these and other constitutionally protected rights.
2. All students are responsible for conducting themselves in a manner that helps enhance an environment of learning in which the rights, dignity, worth, and freedom of each member of the academic community are respected.
3. Violations of University policies, rules or regulations, or federal, state, or local law may result in a violation of this Code and imposition of Conduct Procedures.

## Chapter 2. Definitions

When used in this Code the following terms have the meanings provided below, though not every term in this Code is formally defined:

1. **Accused of a Violation** occurs when the Director of Student Conduct or designee brings a Formal Charge against a Student, Student Group, or Student Organization to initiate a Conduct Procedure.
2. **Administrative Hearing Panel** means a body of three persons appointed by the Director of Student Conduct or designee, consisting of either (a) University administrators and/or faculty members; or (b) one or more University administrators and/or faculty members and one or more Student Judicial Board members, that addresses Formal Charges against a Student, Student Group, or Student Organization.
3. **Advisor** means a person invited to a Conduct Procedure by a Respondent, Complainant, or witness whose role in the Conduct Procedure is limited to conferring with and advising the Respondent, Complainant, or witness. An Advisor is not permitted to argue, make statements, or question witnesses, but may respond to questions if asked by Hearing Panel members to do so. See Chapter 7, Section II of this Code.
4. **Affirm** means to approve and uphold the determination of a lower level decision-maker.
5. **Code** means University Policy 406, The Code of Student Responsibility.
6. **Complainant** means a member of the University community who files a complaint against a Student, Student Group, or Student Organization for violation of this Code; or for purposes of the Sexual Misconduct, Relationship Violence, and Stalking Complaint Procedures set forth in Chapter 8 of this Code, a Student who allegedly experienced the Sexual Misconduct, Relationship Violence, or Stalking.
7. **Conduct Rules** means the Prohibited Conduct set forth in Chapter 5 of this Code.
8. **Conduct Procedure** means a meeting, hearing, or other procedure addressing alleged conduct of a Student, Student Group, or Student Organization, during which a designated University official, board, or panel considers information and/or documentation in order to address whether a Student, Student Group, or Student Organization has violated this Code.
9. **Consent** means an affirmative decision by all participants to engage in mutually acceptable sexual activity. Consent means unambiguous, clear, knowing, and voluntary approval given by words or demonstrated actions to engage in sexual activity. This decision must be made freely and actively by all participants. If any confusion or ambiguity on the issue of Consent arises at any time during the sexual activity, each participant must stop and clarify from the other participant(s) a willingness to continue. Silence, passivity, or lack of resistance does not imply Consent. A previous relationship or prior participation in a sexual activity between the participants does not indicate current Consent. Consent to one form of sexual activity does not imply Consent to other forms of sexual activities Consent to engage in sexual activity with one person does not imply Consent to engage in sexual activity with another person. Being under the influence of drugs or alcohol does not relieve one's responsibility to obtain Consent.

Consent cannot and has not been obtained in situations where someone:

- a. is forced, threatened, pressured, intimidated, manipulated, involuntarily physically restrained or confined, coerced, isolated, or beaten or has reasonable fear that he/she or another will be injured if he/she does not submit to or engage in the sexual activity;
- b. is unable to give Consent or is prevented from resisting sexual activity because he or she is asleep, unconscious, unaware that sexual activity is occurring, or incapacitated (physical and/or mental inability to make informed, rational judgments and/or decisions) due to drugs or alcohol or some other medical condition;

- c. has a mental or physical disability that inhibits his or her ability to give Consent to sexual activity; or.
  - d. is below the age of consent according to Article 7A of Chapter 14 of the North Carolina General Statutes.
10. **Dating Violence** means violence committed by a person—
- a. who is or has been in a social relationship of a romantic or intimate nature with the Complainant or victim; and
  - b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (i) The length of the relationship.
    - (ii) The type of relationship.
    - (iii) The frequency of interaction between the persons involved in the relationship.
11. **Day** (unless otherwise specified) means any day except Saturday, Sunday, or any other day when no University classes are held.
12. **Dean of Students** means the Dean of Students or designee, who acts as a Deputy Title IX Coordinator for the purposes of the Sexual Misconduct, Relationship Violence, and Stalking Complaint Procedures set forth in Chapter 8 of this Code.
13. **Director** means the Associate Dean of Students and Director of Student Conduct.
14. **Distribute** or **distributing** means sale or exchange for personal profit.
15. **Domestic Violence** means conduct that may constitute felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant or victim, by a person with whom the Complainant or victim shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant or victim as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant or victim under Chapter 50B of the North Carolina General Statutes, or by any other person against an adult or youth Complainant or victim who is protected from that person's acts under Chapter 50B of the North Carolina General Statutes.
16. **Expulsion** has the meaning set forth in Chapter 10, Section I(7) of this Code.
17. **FERPA** means the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99.
18. **Force** means the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion.
19. **Formal Charge** occurs when a Student, Student Group, or Student Organization is Accused of a Violation under this Code, and the Director of Student Conduct or designee initiates Conduct Procedures.
20. **Gambling** means operation of any "game of chance" or playing at or betting on any game of chance at which any money, property or other thing of value is bet, whether the same be in stake or not. A "game of chance" is any game or scheme in which receiving something of value depends on chance rather than skill.
21. **Hearing Panel** means either a Student Judicial Board (Student Honor Court), an Administrative Hearing Panel, or a Sexual Misconduct, Relationship Violence, and Stalking Hearing Panel (in cases subject to Chapter 8 of this Code), as specified in Chapter 6, Section VI of this Code.

22. **Hearing Panel Staff Advisor** means the Director of Student Conduct or designee.
23. **Mutual Resolution** occurs when a Student, Student Group, or Student Organization is referred for an alleged violation of this Code, accepts responsibility for the violation(s), waives the right to a Hearing Panel, and agrees to sanctions presented by the Director of Student Conduct or designee.
24. **Investigator** means an official(s) designated to conduct an investigation of alleged violation of the Code, and who acts as the initial University witness(es) in the event of a hearing. In the case of a Sexual Misconduct, Relationship Violence, or Stalking complaint brought under Chapter 8 of this Code, an Investigator, including the Title IX Investigator, means an official designated by the Title IX Coordinator to conduct an investigation of an alleged violation of this Code, and who acts as the primary witness in the event of a hearing.
25. **Minor Violation** means a case in which, based on the Student's prior record or facts and circumstances related to the case at the time of the case referral, the Director of Student Conduct or designee determines that the possible sanctions are **other than** Suspension or Expulsion.
26. **Notice of Outcome** means a written notification issued in accordance with Chapter 9 of this Code that contains the sanction(s) assigned, the due date(s) of the sanction(s), the rationale upon which the determination of responsibility is based, and any available appeal rights.
27. **Possession or possessing** means knowingly or intentionally physically holding or controlling the subject item (including, but not limited to, alcohol, controlled substances, drug paraphernalia, weapons, stolen property, fireworks, or betting devices), or owning or controlling a room, vehicle, or other area where the item is present and where the person owning or controlling the room, vehicle, or other area knew or had reason to know that the item was present. The presence of the item in a room, vehicle, or other area creates a presumption that the person owning or controlling the room, vehicle or other area had knowledge of the item's presence, unless sufficient evidence to the contrary is provided.
28. **Probation** means the several types of probation set forth in Chapter 10 of this Code.
29. **Record on Appeal** means the notice of charges and hearing; the audio recording of the hearing; all documents offered as evidence at the hearing; the Hearing Panel Notes/Summary of Hearing; and any written decision of the Director of Student Conduct or designee, Vice Chancellor of Student Affairs, Chancellor, or Board of Trustees.
30. **Relationship Violence** includes Dating Violence and Domestic Violence as defined in this Code. Hereinafter, Dating Violence and Domestic Violence are collectively referred to as Relationship Violence.
31. **Representative** means a licensed attorney or non-attorney advocate who represents a Student, Student Group, or Student Organization, as set forth in Chapter 6, Section II of this Code.
32. **Respondent** means a Student, Student Group, or Student Organization charged with a violation of this Code.
33. **Responsible** means determined by Conduct Procedures to be responsible for violating this Code.
34. **Retaliation** includes intimidation, harassment, and other adverse action threatened or taken against a Complainant, witness to a violation of this Code, or an interested third party.
35. **Separation of the Student from the University** means that the Student may not be present on University Premises; attend or participate in classes; manipulate any web site or other material

residing on the University's web server; access University's email services; enter or use any University service or facility, including residence hall, dining, recreation, leisure, library, or computer lab services or facilities; or participate in Student Groups, Student Organizations, or any University-sponsored program, activity, or related event.

36. **Serious Violation** means a case in which, based on the Student's prior record or facts and circumstances related to the case at the time of the case referral, the Director of Student Conduct or designee determines that the possible sanctions may include Suspension or Expulsion, as those terms are defined in Chapter 10 of this Code.
37. **Sexual Act** means sexual intercourse, cunnilingus, fellatio, or anilingus, or knowingly inserting an object or part of one's body into another's mouth, genital, or anal opening.
38. **Sexual Act Without Consent** means a Sexual Act that occurs without Consent, as that term is defined in Section 9 of this Chapter.
39. **Sexual Assault** means an offense classified as a forcible or non-forcible sex offense under the Uniform Crime Reporting Program of the Federal Bureau of Investigation, including a Sexual Act Without Consent or Sexual Contact Without Consent.
40. **Sexual Contact** means the deliberate touching of a person's intimate parts (including genitalia, groin, breast, mouth; buttocks or any other orifice or clothing covering any of those areas), touching another with one's intimate parts, or causing a person to touch their own or another person's intimate parts. Sexual Contact includes any intentional bodily contact in a sexual manner, even if the contact does not involve contact with/of/by genitalia, groin, breast, buttocks, mouth or any other orifice.
41. **Sexual Contact Without Consent** means Sexual Contact that occurs without Consent as that term is defined in Section 9 of this Chapter.
42. **Sexual Exhibitionism Without Consent** means engaging in a sexual activity or exposing one's intimate parts (including genitalia, groin, female breast (other than when breastfeeding a child) or buttocks) in the presence of others without their Consent, as that term is defined in Section 9 of this Chapter.
43. **Sexual Exploitation** occurs when a person takes abusive sexual advantage of another or sexual advantage of another without Consent 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 the other Sexual Misconduct or Relationship Violence offenses, and includes, but is not limited to:
  - a. Impairing or attempting to impair another person's ability to provide Consent in order to gain a sexual advantage;
  - b. Prostituting another person;
  - c. Recording, photographing or transmitting identifiable images of a private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person;
  - d. Allowing third parties to observe private sexual activity; and/or
  - e. Engaging in voyeurism.
44. **Sexual Harassment** means unwelcome conduct of a sexual nature, including based on sex or on gender stereotypes, which is so severe, persistent or pervasive that it unreasonably interferes with a person's University employment, academic performance or participation in University programs or activities (i.e. creates a hostile environment).
45. **Sexual Misconduct** is a broad term including, but not limited to, committing a Sexual Act without Consent, Sexual Contact without Consent, Sexual Exhibitionism without Consent, Sexual

Exploitation, or Sexual Harassment. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or on-going sexual relationship. Sexual Misconduct can be committed by men or women, and it can occur between people of the same or different genders. Sexual Misconduct may be considered a Serious Violation as defined under this Code.

46. **Sexual Misconduct, Relationship Violence, and Stalking Hearing Panel** means an Administrative Hearing Panel comprised of non-Student faculty and staff members who have received specialized training, which addresses Formal Charges of Sexual Misconduct, Relationship Violence, and Stalking against a Student, Student Group, or Student Organization under Chapter 8 of this Code.
47. **Stalking** means engaging in a course of conduct (two or more acts) directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress. See NC Gen. Stat. 14-277.3A.
48. **Standard of Proof** means the standard by which it is determined whether or not a violation of this Code has occurred. For the purposes of Conduct Procedures, the Standard of Proof required is a preponderance of evidence (the evidence demonstrates that it is more likely than not that a violation has occurred).
49. **Student** means an individual who, at the time of the alleged conduct, has accepted an offer of admission to the University or has registered for coursework; is an auditing Student; or is participating in an educational program sponsored by or affiliated with the University, and continues until withdrawal, graduation, or a break in registration for twelve or more months that results in an inability to register for classes without reapplication.
50. **Student Group or Group** means a number of persons associated with each other for a common purpose and who have not complied with Student Government formal requirements for registration.
51. **Student Honor Court** means a Conduct Procedure board or hearing panel that is composed entirely of students who address whether a Student, Student Group, or Student Organization has violated the Code of Student Responsibility; also referred to at UNC Charlotte as a "Student Judicial Board."
52. **Student Organization or Organization** means a collection of persons that has complied with Student Government formal requirements for registration.
53. **Suspension** means the several types of suspension set forth in Chapter 10 of this Code.
54. **Title IX Coordinator** means the designated University official with ultimate oversight and responsibility for the University's compliance with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX") and relevant supplemental guidance.
55. **University** means The University of North Carolina at Charlotte.
56. **University Premises** means buildings, grounds or vehicles owned, leased, operated, controlled, or supervised by The University of North Carolina at Charlotte.
57. **Vice Chancellor** means the Vice Chancellor for Student Affairs or designee.
58. **Weapon** means any object or substance used, attempted to be used, or intended to inflict a wound, cause injury or incapacitate, including, but not limited to, all firearms, explosive agents, chemicals, air or canister propelled guns, knives with blades over four (4) inches, martial arts



weapons, or any other “weapon” as defined by NC General Statutes § 14-269.2. (See University Policy 702, Weapons on Campus.)

## Chapter 3. Authority, Students' Rights, and Standards of Due Process

### Section I. Authority

- A. The Code of the University of North Carolina, Section 502 D(3), provides:

"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 student conduct decisions shall be in accordance with the procedures set forth in Chapter 11 of this Code.

- B. The University has the right to take necessary and appropriate action to protect the safety and well-being of the campus community. The Chancellor has delegated to the Director of Student Conduct and the Associate Vice Chancellor and Dean of Students the authority to administer the Student conduct program. The Director of Student Conduct or designee may investigate a case as well as adjudicate or advise a hearing. The investigation by the Director of Student Conduct or designee may be in conjunction with UNC Charlotte Police and Public Safety and/or local police. In all complaints of Sexual Misconduct, Relationship Violence, and Stalking under Chapter 8 of this Code, the Director of Student Conduct and the Associate Vice Chancellor and Dean of Students will work in conjunction with the University Title IX Coordinator to address the complaints. Further, in all cases of Sexual Misconduct, Relationship Violence, and Stalking, the Title IX Coordinator will select and designate the Investigator. When necessary, and in consultation with the Dean of Students, the Title IX Coordinator, and the Office of Legal Affairs, the Director of Student Conduct may alter the Conduct Procedures to protect the University community, property, or resources.
- C. Students assume positions of responsibility in the University student conduct process through the Judicial Branch of the Student Government Association so that they may contribute their skills and insights to the resolution of student conduct cases. Final authority in student conduct matters, however, is vested in the University administration, subject to policies or regulations of the Board of Trustees or the Board of Governors.
- D. The procedures set forth in this Code apply to all cases in which a Student, Student Group, or Student Organization is charged with a violation of this Code; **provided, however, that in cases of alleged Sexual Misconduct, Relationship Violence, or Stalking, the procedures set forth in Chapter 8 of this Code--to the extent they differ from the Conduct Procedures set forth in Chapter 7 of this Code--are applicable.**
- E. This Code may be amended, in writing, by the Chancellor at any time.

### Section II. Student Rights

All Students, Student Groups, and Student Organizations who are Accused of a Violation of the Code of Student Responsibility have the following rights:

1. To be presumed not responsible until proven otherwise;
2. To be given written notice of any charges of alleged violations of Conduct Rules;

3. To be advised of and review the evidence on file with the Office of Student Conduct;
4. To obtain the list of witnesses who have been called to present information at the hearing;
5. To an assigned Student Counsel representative to assist in preparing a response to any allegations of conduct violations;
6. To request a delay of the hearing due to extenuating circumstances, provided that the grant of such request is in the discretion of the Director of Student Conduct, as set forth in Chapter 6, Section V of this Code;
7. To challenge the objectivity of a Hearing Officer or a Hearing Panel member if the Student, Student Group, or Student Organization believes that a bias or conflict of interest may exist;
8. To admit responsibility for any or all of charges of alleged violations of Conduct Rules;
9. To decline to make statements;
10. To present his or her version of the events in question;
11. To have witnesses present information on his or her behalf;
12. To be represented, at the Student's, Student Group's, or Student Organization's expense, by a licensed attorney or a non-attorney advocate during Conduct Procedures, **except** when the violation:
  - a. Will be addressed by a Student Honor Court (Student Judicial Board), or
  - b. Is an allegation of academic dishonesty, as governed by University Policy 407, The Code of Student Academic Integrity.
13. To appeal the decision of a Hearing Panel within the limits of the time and conditions specified in this Code.

### **Section III. Standards of Due Process**

The University shall provide due process as follows:

1. Any Student, Student Group, or Student Organization charged with a violation of this Code is entitled to a hearing before a Hearing Panel composed of either Student Judicial Board members or an Administrative Hearing Panel, as specified in Chapter 6, Section VI of this Code, except where the Respondent and the University agree to resolve the case through a Mutual Resolution , as provided in Chapter 6, Section IV of this Code.
2. The focus of inquiry in Conduct Procedures shall be to determine whether the Respondent is or is not responsible for engaging in prohibited conduct under Chapter 5 of this Code.
3. Formal rules of evidence shall not be applicable, nor shall deviation from prescribed procedures necessarily invalidate a decision or proceeding, unless significant prejudice to a Complainant, Respondent, or the University may result.

## **Chapter 4. Jurisdiction, Student Groups and Organizations, and Pending Criminal Proceedings**

### **Section I. Jurisdiction**

Jurisdiction under this Code may be exercised with respect to conduct that occurs at any time between a Student's acceptance of admission and until withdrawal, graduation, or a break in registration for twelve or more months that results in an inability to register for classes without reapplication. Jurisdiction extends to any incident related to a Student's application for admission or financial aid or otherwise related to his or her admission to the University.

This Code applies only to those instances of Student, Student Group, or Student Organization conduct that are harmful to the appropriate interests of the University:

1. The opportunity of all members of the University community to attain educational objectives consistent with the policies and purposes of the University;
2. The protection of the health, safety, welfare, and property of all persons in the University community; and
3. The protection of the University's integrity and its property.

Instances of prohibited conduct may be subject to this Code whether or not they occur on University premises. The Vice Chancellor for Student Affairs or designee shall determine whether an incident off campus affects University interests and thus falls within the scope of this Code.

This Code is set forth in writing in order to give Students, Student Groups, and Student Organizations general notice of prohibited conduct. This Code should be read broadly and is not designed to define prohibited conduct in exhaustive terms.

### **Section II. Student Groups and Student Organizations**

- a. Student Groups and Organizations may be charged with violations of this Code without regard to whether members of such Groups or Organizations are individually charged with violations arising from the same occurrences.
- b. A Student Group or Organization and its officers, leaders, or any identifiable spokespersons may be held collectively or individually responsible when violations of this Code by those associated with the Group or Organization have received the tacit or overt consent or encouragement of the Group or Organization or of the Group's or Organization's leaders, officers, or spokespersons.
- c. The officers or leaders or any identifiable spokespersons for a Student Group or Organization may be directed by the Vice Chancellor for Student Affairs or designee to take appropriate action designed to prevent or end violations of this Code by the Group or Organization or by any persons associated with the Group or Organization who can reasonably be said to be acting in the Group's or Organization's behalf. Failure to make reasonable efforts to comply with the Vice Chancellor's or designee's directive shall be considered a violation of Chapter 5, Paragraph (m) of this Code both by the individual officers, leaders, or spokespersons for the Group or Organization and by the Group or Organization itself.
- d. Groups and Organizations may be held accountable collectively if any of these situations apply: An alleged conduct violation was committed by one or more members of a Group or Organization; an alleged conduct violation was committed by one or more members of a Group or Organization and Group or Organization funds were used to finance the function; an alleged conduct violation occurred as a result of a Group or Organization sponsored function.
- e. In a hearing in which a Group or Organization is the Respondent, the president or equivalent officer of the Group or Organization shall represent the Group or Organization unless he or she

petitions the panel to substitute another Student representative to represent the Group or Organization at the hearing.

### **Section III. Pending Criminal Proceedings**

The Conduct Procedures under this Code differ from the criminal justice system in scope, purpose, procedure, and outcome, and they are not designed to replace state or federal criminal laws or procedures. Students are required to comply with all North Carolina and federal laws. Students may be accountable to both civil authorities and to the University for acts that constitute violations of law and this Code. Any Conduct Procedures under this Code that result in a revocation of privileges of Enrollment or continued attendance are intended to uphold and promote the purpose and principles of this Code, and are not a substitute for any penalties associated with criminal laws. The Conduct Procedures under this Code will normally proceed during the pendency of criminal proceedings and will not be subject to challenge on the ground that criminal charges involving the same incident have been dismissed or reduced.

## Chapter 5. Prohibited Conduct

The following conduct, or an attempt to engage in the following conduct, is subject to student conduct action [*Note: Letters r and u have been intentionally omitted for continuity in record-keeping.*]:

- a. Engaging in the following activities:
  1. Inflicting physical injury upon a person;
  2. Placing a person in fear of or at risk of imminent physical injury or danger or engaging in retaliatory threats against a person;
  3. Inflicting severe mental or emotional distress upon a person through a course of conduct involving repeated harassment, intimidation, abuse, or disparagement;
  4. Engaging in "fighting words" harassment, as that term is defined in University Policy 503, Fighting Words Harassment;
  5. Engaging in Relationship Violence, including:
    - i. Dating Violence, or
    - ii. Domestic Violence; or
  6. Stalking another person.

With regard to this Chapter 5, Paragraph (a), the following additional regulations (see The University of North Carolina Board of Governors' Policy 700.4.2) apply:

- A. No Student shall threaten, coerce, harass or intimidate another person or identifiable group of persons, in a manner that is unlawful or in violation of a constitutionally valid University policy, while on University premises or at University-sponsored activities based upon the person's actual or perceived race; color; religion; age; national origin; ethnicity; gender, gender identity or expression; sexual orientation; disability; or veteran status.
  - B. No Student shall engage in unlawful harassment leading to a hostile environment. Unlawful harassment includes conduct that creates a hostile environment by meeting the following criteria: It is:
    1. directed toward a particular person or persons;
    2. based upon the person's actual or perceived race; color; religion; age; national origin; ethnicity; gender, gender identity or expression; sexual orientation; disability; or veteran status;
    3. unwelcome;
    4. severe or pervasive;
    5. objectively offensive; and
    6. so unreasonably interferes with the target person's employment, academic pursuits, or participation in University-sponsored activities as to effectively deny equal access to the University's resources and opportunities.
  - C. In determining whether Student conduct violates these provisions, all relevant facts and circumstances shall be considered. Care must be exercised in order to preserve freedoms of speech and expression, as articulated in current legal standards. Advice should be sought from the Office of Legal Affairs, as appropriate.
- b. Using, possessing, or storing any Weapon, dangerous chemical, fireworks or explosive without University authorization, except as explicitly permitted by law and University Policy 702, Weapons on Campus.
  - c. Initiating or causing to be initiated any false report, warning or threat of fire, explosion, or other emergency.

- d. Interfering with normal University activities including, but not limited to, teaching, studying, research, the expression of ideas, University administration, speeches and other public or private events, and fire, police or other emergency services. Acts prohibited by this rule include, but are not limited to, those acts prohibited in University Policy 601.13, Interference with University Operations, which prohibits Student action taken "with intent to obstruct or disrupt any normal operation or function of the University," and University Policy 802, Conduct at Speech Events, which prohibits certain disruptive activities at speech events on campus.
- e. Knowingly violating the terms of any sanction imposed in accordance with this Code.
- f. Engaging in the following activities:
  - 1. Possessing, consuming, or using any controlled substance under the North Carolina Controlled Substances Act (NCGS Chapter 90, Article 5).
  - 2. Possessing or using drug paraphernalia.
  - 3. Manufacturing (including growing marijuana), distributing, delivering, or taking delivery of any controlled substance.
  - 4. Possessing with intent to manufacture (including growing marijuana), distribute, or deliver any controlled substance.
  - 5. Huffing or sniffing any substance not intended for such use.

Standard sanctions and certain other requirements apply where controlled substance offenses are at issue, pursuant to University Policy 711, Program to Prevent Use of Illegal Drugs and Alcohol Abuse.

- g. Setting fires, or misusing or damaging fire safety equipment or elevators.
- h. Engaging in the following activities:
  - 1. Furnishing false information to the University.
  - 2. Failing to report to the Dean of Students Office any criminal felony convictions that are entered against one (a) between application for admission to the University and acceptance of admission or (b) at any time between acceptance of admission and the granting of a degree or other termination of association with the University (see Chapter 4, Section I).
  - 3. Misrepresenting or concealing one's organizational affiliation(s) or sponsorship(s) for the purpose of enticing another person into joining or participating in a Group or Organization.
  - 4. Misrepresenting to a third party one's affiliation with the University.
- i. Engaging in the following activities:
  - 1. Forgery, unauthorized alteration, or unauthorized use or misuse of any document or instrument of identification (ID).
  - 2. Displaying or using an ID that is not one's own or is fictitious, canceled, revoked, suspended, or altered.
  - 3. Counterfeiting, loaning, or selling an ID to another person not entitled thereto.
- j. Any unauthorized use of electronic or other devices to make an audio, photographic, or video record of any person while on University premises without his/her knowledge or without his/her effective consent when such a recording is likely to cause injury, embarrassment, or distress. This includes, but is not limited to, secretly taking audio, video, or photographs of another person in a gym, locker room, restroom, or residence hall room.
- k. Engaging in the following activities:
  - 1. Theft or attempted theft of University or individual property or services.
  - 2. Breaking and entering into University property or the property of others (including, but not limited, to private vehicles).
  - 3. The unauthorized use or access to private or confidential information in any medium.

4. Possessing property that is not your own without owner authorization.
- l. Destroying, defacing, tampering with, or damaging the property of others or University property, including, but not limited to, chalking, spray painting, or otherwise marking without appropriate University approval.
- m. Failing to comply with the reasonable directions of or meeting requests by University officials, including, but not limited to, Dean of Students staff, Police and Public Safety officers, or Housing and Residence Life Staff, acting in performance of their duties.
- n. Violating, aiding in violation of, or concealing evidence of violation of published University policies or regulations. Such policies or regulations include, but are not limited to, all Housing and Residence Life policies, the residence hall contract, and the Resident Handbook (collectively referred to as "Residence Life Policies").
- o. Possessing, consuming, or distributing alcoholic beverages illegally and/or without University authorization, including but not limited, to:
  1. Possessing or consuming alcoholic beverages by Students less than twenty-one years of age;
  2. Operating a motor vehicle under the influence alcohol or while impaired by the consumption of alcohol;
  3. Furnishing or selling any alcoholic beverages to any person less than twenty-one (21) years of age;
  4. Public intoxication;
  5. Failing to abide by the provisions of an "Acknowledgment of Responsibility for Service of Alcoholic Beverages" form;
  6. Making any sale of any alcoholic beverage on the University campus; or
  7. Violation of University Policy 706, Alcoholic Beverages.
- p. Engaging in Sexual Misconduct, including:
  1. Committing Sexual Acts without Consent;
  2. Committing Sexual Contact without Consent;
  3. Committing Sexual Exhibitionism without Consent;
  4. Committing Sexual Exploitation; or
  5. Committing Sexual Harassment
- q. Trespassing, including being present in or using, or aiding and abetting another in being present in or using, University premises, facilities, or property without University authorization.
- r. *[Intentionally omitted for continuity in record-keeping]*
- s. Engaging in the following activities:
  1. Engaging in disorderly conduct, such as fighting, threatening behavior, public disturbance, or drunk and disorderly conduct.
  2. Engaging in conduct, such as loud, aggressive, or combative behavior, that disrupts or interferes with the normal functions of a class, including, but not limited to, failure to conform to the instructor's announced expectations for classroom decorum. Disruptive conduct also includes use of cell phones or other electronic devices for voice or text communication in class, unless permitted by the instructor. (A Student who persists in disruptive conduct as described of this Code is subject to Interim Suspension set forth in Chapter 10, Section III of this Code.)
- t. Engaging in hazing, as defined by University Policy 405, Hazing.
- u. *[Intentionally omitted for continuity in record-keeping.]*



- v. Engaging in computer abuse, including, but not limited to, violation of:
  - 1. University Policy 302, Web Communications;
  - 2. University Policy 303, Network Security;
  - 3. University Policy 304, Electronic Communication Systems;
  - 4. University Policy 307, Responsible Use of University Computing and Electronic Communication Resources;
  - 5. University Policy 601.14, Proprietary Software; or
  - 6. University Policy 311, Data and Information Access and Security and its related University Policies 311.1 through 311.9.
  
- w. Gambling for money or other things of value, except as permitted by law. Prohibited gambling includes, but is not limited to, betting on, wagering on, or selling pools on any athletic or other competitive event; possessing any card, book, or other device (including that which uses the Internet) for registering bets; or bookmaking in connection with betting.
  
- x. Presence during any conduct prohibited by this Code that condones, supports, or encourages such prohibited conduct. Students who are present during a violation of this Code are expected to remove themselves from the situation and are encouraged to report the violation to a University official.
  
- y. Commission of an act, or an attempt to commit an act, that violates state or federal law or local ordinances that is not otherwise a violation of this Code. Such acts will be adjudicated as if they are violations of this Code. The University reserves the right to proceed with a hearing and the possible imposition of a sanction under this Code prior to, concurrent with, or subsequent to, civil litigation, criminal arrest, and/or criminal prosecution as set forth in Chapter 4, Section III of this Code.

## Chapter 6. Case Referrals, Adjudication Methods, and Evidentiary Standard

### Section I. Case Referrals

- a. Any Student, faculty member, University employee, or University administrator may refer a Student, Student Group, or Student Organization suspected of violating this Code to the Dean of Students Office. The referral must be in writing and must include factual information supporting the allegation. A person making such a referral will normally be expected to appear before a Hearing Panel as a witness. Referrals should be made as soon as possible after the alleged conduct violation. Anonymous referrals are not permitted.

Based on such a referral, the Director of Student Conduct or designee will determine whether a Formal Charge shall be pursued and whether that charge constitutes a Minor Violation or a Serious Violation, based on the Student's prior record or facts and circumstances related to the case. This determination should be made within thirty (30) Days after the initiation of the referral; however, a reasonable extension of this time limit is permissible.

In some instances, an Investigator may be assigned to investigate a potential violation of this Code. The Investigator will interview all parties involved and submit a written report to the Director of Student Conduct summarizing his or her findings.

- b. If the Director of Student Conduct or designee determines that a Formal Charge shall be pursued, he or she will schedule an in-person meeting with the Respondent. At that initial in-person meeting, the Director of Student Conduct or designee will provide the Respondent with a statement indicating that the Respondent has the right to be represented, at the Respondent's expense, by a licensed attorney or non-attorney advocate during the Conduct Procedure, subject to the requirements set forth in Section II below.

The Respondent has the option to stop the meeting in order to retain a licensed attorney or non-attorney advocate. The meeting will be rescheduled as soon as possible thereafter. The same rights described in this Chapter 6, Section I(b) apply to Complainants in cases subject to Chapter 8 of this Code.

### Section II. Participation of Licensed Attorneys or Non-Attorney Advocates

- a. **Conduct Procedures in which Licensed Attorneys and Non-Attorney Advocates May Participate**

In accordance with NCGS Section 116-40.11, and subject to the requirements set forth in this Chapter 6, Section II(b), a Respondent who has been Accused of a Violation of this Code may be represented, at the Respondent's expense, by a licensed attorney or a non-attorney advocate (Representative) during the Conduct Procedure, **except** when the violation:

1. Will be addressed by a Student Honor Court (Student Judicial Board), or
2. Is an allegation of academic dishonesty, as governed by University Policy 407, The Code of Student Academic Integrity.

The right to have a licensed attorney or non-attorney advocate represent a Respondent applies when a Respondent is Accused of a Violation of this Code on or after August 23, 2013.

**In cases alleging Sexual Misconduct, Relationship Violence, and/or Stalking pursuant to Chapter 8, the Complainant may be represented, at the Complainant's expense, by a Representative. A Complainant under Chapter 8 and his/her selected Representative are subject to the same requirements in Section II(b) below as a Respondent and his/her selected Representative.**

When scheduling a Conduct Procedure in which the Respondent or the Complainant has notified the University that a Representative plans to participate, the University will make reasonable efforts to accommodate the Representative's schedule. The University will, however, prioritize the availability of the Respondent, Complainant, witnesses, the designated administrator or Administrative Hearing Panel members assigned to the matter, and other necessary participants when determining the date and time for a Conduct Procedure.

A licensed attorney or non-attorney advocate may fully participate in Conduct Procedures only to the extent afforded to the Respondent or the Complainant he or she represents. A licensed attorney or non-attorney advocate who represents a Respondent or Complainant in Conduct Procedures may not delay, disrupt, or otherwise interfere with Conduct Procedures.

An attorney or other individual representing UNC Charlotte may participate in Conduct Procedures in which a Representative represents a Respondent or a Complainant.

Nothing in this Code shall be construed to create a right to be represented during a Conduct Procedure at public expense.

#### **b. Requirements to Serve as a Representative During Conduct Procedures**

In order for a licensed attorney or non-attorney advocate to serve as a Representative of a Respondent or Complainant in a Conduct Procedure, the Respondent or Complainant must provide the Director of Student Conduct with a completed Notice of Attorney or Non-Attorney Advocate Representation form that includes the three items described in this Section II(b). This Notice must be submitted at least three (3) Days prior to the scheduled meeting or hearing.

##### **1. Notice of Representation**

Respondents or Complainants who plan to have a licensed attorney or non-attorney advocate represent them during a Conduct Procedure must notify the Director of Student Conduct in writing of the Representative's planned participation. This notice must specify:

- a. The identity of the Representative;
- b. Whether the individual is a licensed attorney or a non-attorney advocate; and
- c. An address, telephone number, and email address where the Representative can be reached.

##### **2. FERPA Consent**

In order for a licensed attorney or a non-attorney advocate to represent a Student Respondent or Complainant during a Conduct Procedure or to communicate with any UNC Charlotte official regarding the Student Respondent or Complainant, the Student Respondent or Complainant must complete and submit a written authorization that meets the requirements of a valid consent as specified by the Family Educational Rights and Privacy Act (FERPA). Even if a Student Respondent or Complainant executes a valid FERPA consent authorizing the Representative to receive information or documents regarding the Student Respondent or Complainant, the University, its officials, and the Director of Student Conduct or designee will at all times correspond directly with the Respondent or Complainant regarding the Conduct Procedure. It is the Respondent's or Complainant's responsibility to communicate and share information with his/her/its Representative.

##### **3. Certification by Licensed Attorney or Non-Attorney Advocate**

Respondents or Complainants who plan to have a licensed attorney or non-attorney advocate represent them during a Conduct Procedure must submit a certification statement signed by

the Representative stating that the Representative has read in their entirety and understood the following documents:

- a. University Policy 406, The Code of Student Responsibility;
- b. University Policy 402, Student Records;
- c. Residential Student Handbook (if applicable);
- d. University Parking Ordinances (if applicable);
- e. UNC Board of Governors Policy 700.4.1, Policy on Minimum Substantive and Procedural Standards for Student Disciplinary Proceedings;
- f. UNC Board of Governors Regulation 700.4.1.1[R], Applicable to Student Disciplinary or Conduct Procedures: Right to an Attorney or Non-Attorney Advocate for Students and Student Organizations; and
- g. The Code of The University of North Carolina, Section 502 D(3).

#### **4. Presence of Respondent or Complainant**

A Respondent's or Complainant's Representative may participate in Conduct Procedures only when the Respondent or Complainant is also present.

Failure to meet the requirements as set forth in this Section II(b) may result in the loss of the Respondent's or Complainant's right to participation of a Representative in the Conduct Procedures.

Throughout this Code, a Representative can act on behalf of the Student he or she represents (either the Respondent or the Complainant) in any instance where the action is not inherently personal to the Respondent or the Complainant (inherently personal actions include, but are not limited to, personal testimony, signing documents, completing sanctions).

### **Section III. Administrative Resolution of Residence Life Policy Violations**

An Administrative Resolution may be applied in cases in which the Director of Student Conduct or designee determines that:

- a. There is a preponderance of the evidence that a Student has engaged in a single, first-time violation of Residence Life Policies, pursuant to Chapter 5, Paragraph (n) of this Code;
- b. There is little additional information needed to resolve the case;
- c. Important information relevant to the policy violation may be communicated to the Student in writing, without a face to face meeting; and
- d. The appropriate response to the violation is limited to an official written notice to the Student educating him or her about the policy that has been violated.

The Administrative Resolution will result in a letter from the Director of Student Conduct or designee to the Student that:

- a. Provides notification of the charge;
- b. Educates the Student about the policy that has been violated;
- c. Offers the Student the opportunity to engage in a Mutual Resolution;
- d. Notifies the Student that he/she has five (5) Days to request a Mutual Resolution;
- e. Notifies the Student that if he/she does not respond to the letter within three (3) Days, the Administrative Resolution stands, and the case will be closed.

### **Section IV. Mutual Resolution**

When the Director of Student Conduct determines that the Mutual Resolution process is appropriate, he or she will deliver a written Notice of Charges to the Respondent. The Notice of Charges will include:

- a. Notice of the charge(s);

- b. A request that the Respondent participate with the Director of Student Conduct or designee in a meeting to discuss details related to the alleged violation (“Mutual Resolution Meeting”);
- c. If the charge is for a Serious Violation, notice that the adjudication could result in Suspension or Expulsion; and
- d. Notice that the Respondent is required to respond to the Director of Student Conduct or designee within three (3) Days of delivery of the Notice of Charges.

During the Mutual Resolution Meeting, the Respondent will have an opportunity to discuss the alleged violation with the Director of Student Conduct or designee, who will, if appropriate, offer the Respondent the option of a Mutual Resolution, including sanction(s).

A Respondent who accepts a Mutual Resolution must accept responsibility for the violation(s) and the sanction(s) imposed by the Director of Student Conduct or designee, and waives his/her right to a Hearing Panel. If the violation(s) includes charges of Sexual Misconduct, Relationship Violence, and/or Stalking, the Complainant must also be informed of the Mutual Resolution, and the Mutual Resolution will not be final unless the Complainant also agrees to the Mutual Resolution as it relates to those charges, as set forth in Chapter 8, Section VI(c). The Director of Student Conduct or designee must determine that the acceptance of a Mutual Resolution is voluntary and that the charge(s) and sanction(s) have factual support.

The Mutual Resolution must be in writing and signed by the Respondent, the Complainant (for cases under Chapter 8 of this Code), and the Director of Student Conduct or designee. The signed Mutual Resolution may not be appealed.

#### **Section V. Resolution through Hearing Panel**

If the Director of Student Conduct or designee does not offer a Mutual Resolution or if the Respondent or Complainant (under Chapter 8 of this Code) does not accept a Mutual Resolution offer, the Director of Student Conduct or designee shall deliver a Notice of Hearing letter and schedule a Hearing Panel as described in Chapter 7 of this Code. The Director of Student Conduct or designee may adjust the charge(s) based on information provided before or during the Mutual Resolution meeting.

At any time up to three (3) Days before the Hearing Panel is scheduled, the Director of Student Conduct or designee may offer or accept a Mutual Resolution for any violation(s) under this Code. The scheduling of hearings may be delayed at the discretion of the Director of Student Conduct during times of heavy case loads, if the charge(s) occurs close to the end of an academic semester or term, in the event of the reasonable need of either party for additional time to gather information for the hearing, or upon request of the Complainant or Respondent due to extenuating circumstances. In the case of alleged Sexual Misconduct, Relationship Violence, and Stalking under Chapter 8 of this Code, the hearing may be delayed at the discretion of the Director of Student Conduct, after consultation with the Title IX Coordinator.

#### **Section VI. Hearing Panels**

- a. Hearing Panels for cases of alleged conduct violations under this Code will be composed of three voting panel members from the Student Judicial Board, except as noted in this Chapter 6, Section VI(c). Hearing Panel members shall hold office in accordance with applicable University policy.
- b. A Hearing Panel member who has a conflict with, bias about, or interest in the case should recuse himself or herself. If a Hearing Panel member with a conflict fails to recuse himself or herself, the Director of Student Conduct or designee shall make the decision about whether to remove that person from the Hearing Panel.
- c. In lieu of a panel of Students from the Student Judicial Board, an Administrative Hearing Panel may be convened by the Director of Student Conduct to hear cases of alleged conduct violations when:

1. The Director of Student Conduct concludes that the case arises at a time when Student panel members are unavailable (for example, during holidays, semester breaks, or the summer months);
2. There is clear and convincing evidence that the Respondent may not receive a fair hearing from the Student Judicial Board;
3. A backlog of cases has developed, and Administrative Hearing panels in addition to Student Judicial Board panels are necessary to assure prompt resolution of cases;
4. A case addressing Sexual Misconduct, Relationship Violence, and/or Stalking is conducted under Chapter 8 of this Code, in which case a Sexual Misconduct, Relationship Violence, and/or Stalking Hearing Panel shall be convened; or
5. There is any other circumstance in which the Dean of Students or the Director of Student Conduct deems such a panel to be appropriate.

#### **Section VII. Evidentiary Standard**

For a Respondent to be found responsible for a violation of this Code, the evidence must establish that the Respondent is responsible for the violation by a preponderance of the evidence: that it is more likely than not that the Respondent violated the Code of Student Responsibility as charged. This determination must be based solely on the evidence presented during the Conduct Procedures.

## Chapter 7. Hearing Panel Conduct Procedures

The following Conduct Procedures shall be applicable for Formal Charges adjudicated by a Hearing Panel under this Code. **In cases of Sexual Misconduct, Relationship Violence, and/or Stalking the procedures set forth in Chapter 8 shall also apply.**

### Section I. Notice of Hearing

If, pursuant to Chapter 6, Section V of this Code, no Mutual Resolution is offered or the Mutual Resolution is not accepted, the Director of Student Conduct or designee shall deliver a Notice of Hearing letter to the Respondent and Complainant.<sup>1</sup> The letter shall include:

- a. A statement of the specific Formal Charges against the Respondent, citing the alleged conduct;
- b. The date, time, and location for the hearing on the Formal Charges;
- c. The names of the panelists who will hear the case;
- d. The names of any witnesses for the University;
- e. Notice of the right of reasonable access to the case file in the Student Counsel Office, the Student Attorney General's Office, or the Office of Student Conduct;
- f. A statement indicating that the Respondent may seek assistance from the Student Counsel Office and the Complainant may seek assistance from the Student Attorney General's Office in the preparation of his or her case for the hearing;
- g. A statement indicating that the Respondent and the Complainant have the right to be represented, at the Respondent's or the Complainant's expense, by a licensed attorney or a non-attorney advocate during Conduct Procedures, **except** when the violation:
  1. will be addressed by a Student Honor Court (Student Judicial Board), or
  2. is an allegation of academic dishonesty, as governed by University Policy 407, The Code of Student Academic Integrity.
- h. For Serious Violations only, notice of the possibility of a sanction of Suspension or Expulsion; and
- i. For Serious Violations only, notice that the Respondent's University account will be placed on hold until final resolution of the case.

### Notice for Minor Violations

In cases of Minor Violations, the Respondent and Complainant shall have no fewer than five (5) Days' notice of the hearing, unless such time limit is waived by the Respondent or Complainant. Notice is sufficient if the letter is mailed via first class, registered, or certified mail to the Respondent's and Complainant's current addresses as shown in the Banner System on the date of mailing, or via email to the Respondent's and Complainant's UNC Charlotte email addresses. All claims of failure to receive adequate notice are waived by the Respondent or Complainant if the Respondent or Complainant appears at the hearing and does not formally raise the issue of adequate notice at the first opportunity.

### Notice for Serious Violations

In cases of Serious Violations, the Respondent and Complainant shall have no fewer than ten (10) Days' notice of the hearing, unless such time limit is waived by the Respondent or Complainant. Notice is

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<sup>1</sup> In this instance, and hereinafter in this Chapter 7, "Complainant" refers to a person who allegedly experienced Sexual Misconduct, Relationship Violence, and/or Stalking and does not refer to a Complainant who has filed a complaint outside the scope of Chapter 8.

sufficient if the letter is mailed via first class, registered, or certified mail to the Respondent's and Complainant's current addresses as shown in the Banner System on the date of mailing, or via email to the Respondent's and Complainant's UNC Charlotte email addresses. All claims of failure to receive adequate notice are waived by the Respondent or Complainant if the Respondent or Complainant appears at the hearing and does not formally raise the issue of adequate notice at the first opportunity.

## **Section II. Attendance of Advisors**

An Advisor will be selected from the Student Counsel Office to attend the hearing and may serve as an Advisor to the Respondent. Witness(es) to the incident that is the basis of the Formal Charge(s) and/or the Complainant may be accompanied by an Advisor selected from the Student Attorney General's Office. Participants may decline the assistance of the Student Counsel Office or Student Attorney General's Office.

The Respondent may also bring an individual to the hearing to serve solely as an Advisor in addition to the Advisor from the Student Counsel Office. The Complainant may also bring an individual to the hearing to serve solely as an Advisor in addition to the Advisor from the Student Attorney General's Office. If that individual has met the requirements set forth in Chapter 6, Sections II(a) and (b) above, that individual may act as a Representative of the Respondent or the Complainant rather than an Advisor. Otherwise, the Respondent or the Complainant is responsible for presenting his or her own case; the Advisor may confer with the Respondent or the Complainant during the hearing but may not address the Hearing Panel, other parties, or witnesses and may not delay or disrupt the proceeding.

## **Section III. Witnesses and Evidence**

### **a. Witnesses and Evidence in Cases *other than those under Chapter 8***

During the hearing:

1. The Director of Student Conduct or designee shall present the case on behalf of the University, including witnesses and/or documentary evidence to establish the conduct violation.
2. The Director of Student Conduct or designee may submit as documentary evidence any notes from the Mutual Resolution meeting offered to the Respondent in Chapter 6, Section IV of this Code.
3. The Investigator, if applicable, will present the investigation report to the Hearing Panel.
4. The Respondent is expected to give truthful testimony. Furnishing untruthful testimony may subject the Respondent to additional action under this Code.
5. The Respondent shall be given the opportunity to present any witness or documentary evidence that he or she wishes to offer, provided that, at the discretion of the Chair of the Hearing Panel and/or Hearing Panel Staff Advisor, the evidence is relevant to the charge or other evidence presented and does not otherwise infringe the rights of other Students. The Respondent shall also be afforded an opportunity to transmit questions, through the Chair of the Hearing Panel, to those witnesses who testify at the proceedings and to examine any documents offered as evidence. Documentary evidence does not include written witness statements. Written witness statements are admissible only in accordance with paragraph (h) of this Chapter 7, Section III.
6. Prior to a hearing on a Serious Violation, the Respondent, upon request to the Director of Student Conduct or designee, must be given the opportunity to review any documentary evidence that will be used at the hearing and to obtain a list of witnesses.
7. The Respondent may seek the assistance of the Student Counsel Office and witness(es) to the incident may seek the assistance of the Student Attorney General Office in obtaining attendance of University students or employees at the hearing. University students or employees called as



witnesses must attend the hearing unless compliance would result in significant and unavoidable personal hardships or substantial interference with normal University activities. All witnesses are required to give truthful testimony. Furnishing untruthful testimony or failing to appear after an appropriate request may subject an employee or student witness to appropriate disciplinary action.

8. Written statements of evidence by a witness in lieu of appearance and testimony at the hearing may be admitted into evidence as follows: Subject to other provisions in this Code relating to the admissibility of evidence, such written statements may be admitted into evidence only if the witness is unavailable. For a witness to be considered unavailable, it must be clearly demonstrated that the witness's attendance would result in significant and unavoidable personal hardship or substantial interference with normal University activities. A witness's desire to avoid cross-examination may not be used to demonstrate "personal hardship." To be eligible for admission into evidence, such written statements must be signed by the individual writing the statement and witnessed by a person designated by the Director of Student Conduct.

**b. Witnesses and Evidence in Cases under Chapter 8**

1 Prior to the hearing, the Complainant and Respondent shall be given the opportunity to review the investigative report and provide a response, if desired.

2. Prior to the hearing, the Complainant and Respondent, upon request to the Director of Student Conduct, must be given the opportunity to review any documentary evidence that will be used at the hearing and obtain a list of witnesses (if any other than the Investigator).

3. During the hearing, the Investigator will present the investigation report to the Hearing Panel.

4. All witnesses with any relevant information must be brought to the attention of the Investigator during the investigation. Absent extraordinary circumstances and except in the case of character witnesses who will testify only during the sanctioning phase of the hearing, no witnesses who were not interviewed by the Investigator may participate in the hearing. All witnesses are required to give truthful testimony. Furnishing untruthful testimony or failing to appear after an appropriate request may subject an employee or student witness to appropriate disciplinary action.

5. The Complainant and Respondent are expected to give truthful testimony. Furnishing untruthful testimony may subject the Complainant and/or Respondent to additional action under this Code.

6 Written statements of evidence by a witness in lieu of appearance and testimony at the hearing may be admitted into evidence as follows: Subject to other provisions in this Code relating to the admissibility of evidence, such written statements may be admitted into evidence only if the witness is unavailable. For a witness to be considered unavailable, it must be clearly demonstrated that the witness's attendance would result in significant and unavoidable personal hardship or substantial interference with normal University activities. A witness's desire to avoid cross-examination may not be used to demonstrate "personal hardship." To be eligible for admission into evidence, such written statements must be signed by the individual writing the statement and witnessed by a person designated by the Director of Student Conduct.

7. Complainants and Respondents will not be allowed to cross-examine or question the other under any circumstances. If a Complainant or Respondent has a question for the other during the pendency of a Hearing Panel, he or she may submit the question to the Hearing Panel, which may then ask the question on behalf of either the Complainant or Respondent.

8. Questioning and information regarding the Complainant's sexual history with any person other than the Respondent(s) shall not be permitted.

#### **Section IV. Compliance with Federal Law**

Pursuant to FERPA, under specific circumstances the University may disclose the final results of any conduct proceeding against a Student who is also an alleged perpetrator of any crime of violence or non-forcible sex offense, **but only as specifically set forth in Section II.B.10 of University Policy 402, Student Records.**

Pursuant to FERPA, charges against multiple parties involved in the same incident may be heard in a single case only if each party consents to such a proceeding either in writing or by not formally objecting at the hearing.

#### **Section V. Challenges of Hearing Panel Members**

The Respondent, the Complainant, or the witness(es) may challenge any person selected for the Hearing Panel on grounds of bias or a personal relationship that might affect impartial consideration of the case. The Respondent or Complainant must bring the challenge in writing to the Director of Student Conduct or designee at least 48 hours prior to the scheduled hearing. The Director of Student Conduct shall make a decision on the challenge prior to the hearing. If the Director of Student Conduct determines possible bias, he or she shall excuse the panel member and appoint a replacement.

#### **Section VI. Appearance of Respondent and Complainant**

If the Respondent fails to appear after proper notice, the Hearing Panel will make a determination in the absence of that Respondent. In the case of a complaint made pursuant to Chapter 8 of this Code involving Sexual Misconduct, Relationship Violence, and/or Stalking, the Complainant is not required to be present at the Hearing Panel.

#### **Section VII. Closed Hearing**

The hearing is closed to the public unless the witness(es) to the incident, the Complainant, and Respondent mutually agree to an open hearing. In a closed hearing, admission of any person to the hearing shall be at the discretion of the Hearing Panel Staff Advisor, as designated in this Chapter 7, Section VIII; however, in cases of alleged Sexual Misconduct, Relationship Violence, or Stalking under Chapter 8 of this Code, the Complainant and the Respondent shall have the same opportunities to have others present.

To go into a closed session, a Hearing Panel member must properly make a motion specifically identifying the "Family Educational Rights and Privacy Act" or "FERPA" as the legal basis for meeting in closed session, and the motion must be seconded and adopted by the Hearing Panel. The motion must be made and adopted prior to any record being created that includes personally identifiable information about a Student. A "fill-in-the-blank" written form for the motion is available from the Office of Student Affairs and on the Office of Legal Affairs web site at:  
<http://legal.uncc.edu/sites/legal.uncc.edu/files/media/ClosedSessionTemplate.doc>.

At the conclusion of the closed session, a Hearing Panel member shall make a motion to go back into open session prior to adjourning the hearing, and that motion must be seconded and adopted by the Hearing Panel. A motion to adjourn must be made in open session.

#### **Section VIII. Conduct of the Hearing**

Formal rules of evidence shall not apply. The Chair of the Hearing Panel and the Hearing Panel Staff Advisor shall determine the admissibility of all matters of evidence. The Respondent's prior conduct record shall not be considered in the hearing until responsibility has been established.

The Chair of the Hearing Panel shall exercise control over the proceedings to avoid needless consumption of time and to achieve orderly completion of the hearing. The Chair of the Hearing Panel may exclude any person who disrupts a hearing, including the Respondent or his/her Representative.

A Hearing Panel Staff Advisor designated by the Director of Student Conduct shall attend the proceeding, may comment on questions of procedure and admissibility of evidence, and will otherwise assist in conducting the hearing. The Hearing Panel Staff Advisor shall have the privileges of Hearing Panel members but shall not vote. The Hearing Panel Staff Advisor shall be present during deliberations of the Hearing Panel but shall not actively participate in the decision or vote.

Each hearing shall be audio recorded by the University and not by any other person, and the recording shall become a part of the case file in the Dean of Students Office. All documents included in the hearing records shall remain the property of the University.

## **Chapter 8. Sexual Misconduct, Relationship Violence, and Stalking Complaint Procedures**

### **Section I. Overview and Purpose**

These Sexual Misconduct, Relationship Violence, and Stalking Complaint Procedures (“these Procedures” as used in this Chapter 8) apply to alleged Sexual Misconduct, Relationship Violence, and/or Stalking by Students against other Students.<sup>2</sup> Sexual Misconduct, Relationship Violence, and Stalking, as defined in Chapter 2 of this Code, comprise a broad range of behavior that is not tolerated in the University community.

The University is committed to fostering an environment that promotes prompt reporting of all types of Sexual Misconduct, Relationship Violence, and Stalking; a timely response to complaints; and a fair, impartial and equitable investigation and conduct process. Pursuant to this Code, the University will provide a prompt, fair, and impartial investigation and resolution of Sexual Misconduct, Relationship Violence, and Stalking complaints. Most cases of alleged Sexual Misconduct, Relationship Violence, and/or Stalking will be resolved within sixty (60) calendar days, excluding any appeal(s). Sexual Misconduct, Relationship Violence, and Stalking violate University policy and federal civil rights laws and may also be subject to criminal prosecution.

As a recipient of federal funds, the University complies with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”),<sup>3</sup> which prohibits discrimination on the basis of sex in education programs or activities. Sexual Misconduct, as defined in Chapter 2 of this Code, is a form of sex discrimination prohibited by Title IX. The University of North Carolina at Charlotte is committed to providing programs, activities, and an educational environment free from sex discrimination. The University is also committed to providing programs, activities, and an educational environment free from relationship violence and stalking under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f), as amended by the Violence Against Women Reauthorization Act of 2013 (“Clery Act”).

As a public institution, the University must also provide due process to Students accused of Sexual Misconduct, Relationship Violence, and/or Stalking. These Procedures are designed to provide a fair and impartial process for both the Complainant and the Respondent. Consistent with due process, a Respondent is presumed not responsible until proven otherwise under this Code.

All persons involved in addressing complaints made under this Chapter receive annual training on issues related to Sexual Misconduct, Relationship Violence, and Stalking and how to conduct an investigation and hearing process that protects the safety of Complainants and promotes accountability.

### **Section II. Violations**

The following behavior, or an attempt to engage in the following behavior, is prohibited under Chapter 5, Paragraph (p) of this Code:

1. Committing Sexual Acts without Consent;
2. Committing Sexual Contact without Consent;
3. Committing Sexual Exhibitionism without Consent;
4. Committing Sexual Exploitation; and/or

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<sup>2</sup> A University employee who alleges Sexual Misconduct, Relationship Violence, or Stalking against a Student will have all rights afforded to the University employee by state and federal law.

<sup>3</sup> Title IX requires that the University have a statement of policy and procedure for handling complaints of Sexual Misconduct. 20 U.S.C. 1092(1)(7) and 1681(a). This Policy constitutes that statement.

## 5. Committing Sexual Harassment.

The following behavior, or an attempt to engage in the following behavior, is prohibited under Chapter 5, Paragraphs (a)(5) and (a)(6): Engaging in Relationship Violence, including i. Dating Violence, or ii. Domestic Violence; or Stalking another person.

### **Section III. Timing; Preservation of Evidence; Retaliation**

#### **a. Timing of Complaints and Availability of Procedures**

There is no time limit to invoking these Procedures in responding to complaints of alleged Sexual Misconduct, Relationship Violence, and/or Stalking. Nevertheless, students are encouraged to report a complaint immediately in order to maximize the University's ability to obtain information, and conduct a thorough, impartial and reliable investigation. Failure to promptly report alleged Sexual Misconduct, Relationship Violence, and/or Stalking may result in the loss of relevant information and witness testimony and may impair the University's ability to enforce these Procedures.

Pursuing a complaint under this Chapter does not affect a Complainant's ability to pursue a criminal complaint through the criminal justice system. A Complainant may choose to pursue a complaint under this Chapter, through the criminal justice system, or both (either simultaneously or consecutively).

#### **b. Preservation of Evidence**

Students are encouraged to preserve any evidence that may be important to an investigation of a complaint of Sexual Misconduct, Relationship Violence, and/or Stalking including, but not limited to, handwritten or electronic communications such as text messages, telephone messages and emails, videos and/or photographs of the incident. In the case of a Sexual Assault, the University encourages the Complainant to seek medical help within 72 hours of the Sexual Assault so that any physical evidence can be preserved for use at a later date should that be necessary.

#### **c. Other Violations Separate**

A person should not be deterred from reporting a violation under this Chapter simply because alcohol, drugs, or other violations of this Code were involved in the incident. The University's primary concern is student safety, and the use of alcohol or drugs never makes a Complainant at fault for Sexual Misconduct, Relationship Violence, or Stalking. Therefore, any other violations of this Code will be addressed separately from the allegations under this Chapter. The Director of Student Conduct, may, in his or her discretion, and on a case-by-case basis, determine not to pursue minor alcohol or drug violations related to alleged violations under this Chapter.

#### **d. Retaliation**

Retaliation against any person making a complaint of Sexual Misconduct, Relationship Violence, and/or Stalking or against any person cooperating in the investigation of (including testifying as a witness to) any allegation of Sexual Misconduct, Relationship Violence, and/or Stalking is prohibited by this Title IX and this Policy. Any such retaliation should be reported promptly to the Dean of Students or designee (or in the case of imminent threat of serious bodily injury, to Police and Public Safety). Retaliation may result in disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of Sexual Misconduct, Relationship Violence, and/or Stalking.

### **Section IV. Reporting**

The Title IX Coordinator is authorized to enact procedures that include specific instructions for reporting incidents of Sexual Misconduct, Relationship Violence, and Stalking.

## **Section V. Procedure; Initial Steps**

A Complainant who wishes to report an allegation of Sexual Misconduct, Relationship Violence, and/or Stalking may report such concern to the Dean of Students Office, the Title IX Office and/or Police and Public Safety. Both a Complainant and a Respondent may choose to have an Advisor present for guidance and support throughout the entire process as set forth in Chapter 7, Section II.

### **a. Initial Meeting with Complainant**

Upon receipt of notice of any allegation of Sexual Misconduct, Relationship Violence, and/or Stalking, the Dean of Students or designee will promptly schedule an individual meeting with the Complainant to:

1. provide the Complainant a general understanding of this Code, these Procedures, and the Investigative process;
2. provide the Complainant with a written explanation of the Complainant's rights and options pursuant to this Code and these Procedures, including the right to have a licensed attorney or non-attorney advocate participate as described in Chapter 6, Sections I(b) and II;
3. discuss and provide written information regarding forms of support or immediate interventions available to the Complainant, such as on and off-campus resources, interim measures, etc.;
4. discuss and provide written information regarding any accommodations that may be appropriate concerning the Complainant's academic, University housing, transportation, and/or University employment arrangements;
5. seek to determine if the Complainant wishes to notify law enforcement authorities, wishes to be assisted in notifying law enforcement authorities, or does not wish to notify law enforcement authorities; and
6. inform the Complainant about how the University will protect the Complainant's confidentiality under Chapter 8, Section V(b) below, including the omission of the Complainant's identifying information in publicly-available records, to the extent permissible by law.

### **b. Complainant Does Not Wish to Proceed with an Investigation or Formal Charges, or Requests Confidentiality**

If the Complainant does not wish to proceed with an Investigation or Formal Charges, and/or requests the complaint remain confidential, Title IX still requires the University to investigate and take reasonable action in response to the Complainant's information. The Dean of Students or designee will inform the Complainant that the University's ability to respond may be limited and will refer the Complainant to the Title IX Coordinator.

The Title IX Coordinator will weigh the Complainant's request(s) for confidentiality and/or wish not to proceed with an investigation or Formal Charges against the University's obligation to provide a safe, non-discriminatory environment for all Students. Specifically, the Title IX Coordinator will consider the following factors:

1. the seriousness of the alleged Sexual Misconduct, Relationship Violence, or Stalking;
2. whether there have been other complaints of Sexual Misconduct, Relationship Violence, or Stalking against the same Respondent at the University or any other school or in the nature of prior criminal charges;
3. whether the Respondent threatened further Sexual Misconduct or violence against the Complainant or others;
4. whether the Sexual Misconduct was committed by multiple Respondents;
5. whether the Sexual Misconduct or Relationship Violence involved use of a weapon;
6. the age of the Complainant;

7. whether the University possesses other means to obtain relevant evidence of the Sexual Misconduct, Relationship Violence, or Stalking;
8. whether the complaint reveals a pattern of conduct at a particular location or by a particular individual and or Student Group or Organization; and
9. the Respondent's right to receive information about the allegations if the information is maintained by the University as an "education record" under FERPA.

The Title IX Coordinator or designee will inform the Complainant if the University cannot ensure confidentiality. In an instance where the University must disclose a Complainant's identity to an alleged Respondent, the Title IX Coordinator or designee will inform the Complainant prior to making the disclosure.

Even if the Complainant does not wish to proceed with Formal Charges because the Complainant insists on confidentiality or requests that the complaint not be resolved, the University reserves the authority to undertake an appropriate action, including the interim measures described in this Chapter 8, Section V(d) below. The Title IX Coordinator or designee will inform the Complainant that the University will follow the Conduct Procedures in Section VI below in resolving the complaint.

**c. Complainant Wishes to Proceed with the University Conduct Process**

A Complainant may elect to pursue Formal Charges under this Code, which may involve a hearing before a Sexual Misconduct, Relationship Violence, and Stalking Hearing Panel. The Dean of Students or designee will schedule an individual meeting with the Respondent in order to provide the Respondent with notice of the Complaint, a general understanding of the Procedures set forth in this Chapter 8, including the Conduct Procedures in Section VI below, and to identify forms of support or immediate interventions available to the Respondent.

**d. Interim Measures**

In all complaints of alleged Sexual Misconduct, Relationship Violence, and/or Stalking, the University may take prompt action to prevent continuing or future acts of Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation in any form against the Complainant or any person that participates in the complaint investigation, such as witnesses. Such action may include Interim Suspension of the Respondent as outlined in Chapter 10, Section III of this Code. The University may also take immediate steps to protect a Complainant pending the outcome of an investigation, including reasonable academic, University housing, transportation, University employment and other accommodations as appropriate.

**Section VI. Conduct Procedures**

**a. Determination of Proceedings**

The Title IX Coordinator or designee will determine the most appropriate means for addressing the complaint. This may include formally investigating the complaint as described in this Chapter 8, Section VI(b), or determining that the facts of the complaint do not constitute a violation of this Code.

**b. Investigation Proceedings**

If the Title IX Coordinator decides to formally investigate the complaint, she/he will provide a Notice of Investigation to both the Respondent and Complainant. This Notice will include a description of the alleged conduct, the alleged conduct violation(s) under Chapter 5 of this Code, a description of the investigation process, and a reaffirmation of available resources for both parties throughout the process.

The Title IX Coordinator will appoint one or more Investigators, who will conduct interviews with the Complainant, the Respondent, and any third party witnesses, and who will collect and review any other information relevant to the complaint. When applicable, the Investigator(s) will coordinate with Police and Public Safety and other law enforcement officials.

Once a formal investigation is completed, the Investigator(s) will prepare an Investigative Report that includes the following:

1. an overview of the incident including involved parties and history of the case;
2. alleged violation(s) and Standard of Proof;
3. summaries of information provided by the Complainant, Respondent and any third party witness;
4. summaries of information provided by expert witnesses, where applicable;
5. any other relevant information (e.g., photographic, electronic and/or forensic evidence);
6. a summary of established facts and information that remains in question;
7. recommendation of determination regarding alleged violations; and
8. a list of recommended witnesses to be called in the event of a formal hearing.

After review of the Investigative Report by the Title IX Coordinator, the Investigator(s) will distribute the Investigative Report to the Complainant and the Respondent. The Investigator(s) will then meet independently with the Complainant and the Respondent to discuss the Investigative Report findings, collect responses, answer any questions, and discuss next steps in the process. Once the Investigative Report and responses from the Complainant and the Respondent have been collected, the Investigator(s) will distribute the documents to the Director of Student Conduct or designee. The Investigator(s) will make a recommendation to the Director of Student Conduct or designee as to whether a violation has been committed. The Director of Student Conduct or designee will make a determination as to whether a violation has been committed, and whether to move forward with a Conduct Procedure.

### **c. Mutual Resolution**

When the Director of Student Conduct or designee determines that a Mutual Resolution is appropriate, the Mutual Resolution process, as described in Chapter 6, Section IV of this Code, shall apply. However, mediation between a Complainant and a Respondent in Sexual Misconduct cases is never permitted.

Following the Respondent's Mutual Resolution meeting and if the Respondent accepts the offered Mutual Resolution, the Director of Student Conduct or designee will provide the Complainant with a summary outlining the findings, sanctions, and rationale related only to Sexual Misconduct, Relationship Violence, and/or Stalking violation(s). The Director of Student Conduct or designee will then meet with the Complainant to discuss the proposed Mutual Resolution and to determine whether the Complainant accepts the Mutual Resolution. The Director of Student Conduct or designee must determine that the Complainant's acceptance of a Mutual Resolution is voluntary.

If both the Respondent and the Complainant agree to the findings and proposed sanctions, the case is resolved with a waiver of a hearing and no further right of appeal.

If the Director of Student Conduct or designee does not offer a Mutual Resolution or either the Respondent or the Complainant does not accept a Mutual Resolution offer, the Director of Student Conduct or designee shall refer the matter to a Sexual Misconduct, Relationship Violence, and Stalking Hearing Panel, which will initiate the Hearing Panel Conduct Procedures as set forth in Chapter 7 of this Code. The Investigative Report will be submitted into evidence to the Sexual Misconduct, Relationship Violence, and Stalking Hearing Panel by the Investigator.



**d. Notice of Hearing and Sexual Misconduct Hearing Procedures**

The Notice of Hearing and Formal Conduct Procedures set forth in Chapter 7 of this Code shall apply.

**e. Advisors to the Parties**

Both the Complainant and Respondent may be accompanied by an Advisor as set forth in Chapter 7, Section II of this Code.

In addition, both the Complainant and Respondent may elect to be represented by a licensed attorney or non-attorney advocate, **subject to the requirements set forth in Chapter 6, Sections II(a) and (b) of this Code.**

**f. Attendance of Parties**

The Respondent and Complainant may remain present throughout the hearing, with the exception of Hearing Panel deliberations. If the Respondent elects not to attend the hearing, the Sexual Misconduct, Relationship Violence, and Stalking Hearing Panel will make a determination in the absence of the Respondent. The Complainant is not required to be present at the Hearing Panel as a prerequisite to proceeding with a hearing.

**g. Special Accommodations**

Upon timely request to the Director of Student Conduct or designee by a party or witness, the University may be able to provide special accommodations for testimony by alternate methods (such as a room divider or video conference). Such accommodations are at the discretion of the Director of Student Conduct or designee, in consultation with the Title IX Coordinator.

**h. Impact Statement**

If the Hearing Panel determines that the Respondent is responsible for Sexual Misconduct, Relationship Violence, and/or Stalking, both the Complainant and Respondent may present the Hearing Panel with an impact statement prior to the sanctioning phase. The Hearing Panel may consider, but is not bound by, these statements in determining a sanction.

**i. Responsibility and Sanctions**

Recommendations and determinations on responsibility and sanctions shall be made in accordance with Chapter 9 of this Code; provided, however, that the Complainant and Respondent shall be notified simultaneously in writing of the following:

- a. the outcome of any Conduct Procedure, consistent with federal law;
- b. the University's procedures for the Complainant and Respondent to appeal the determinations on responsibility and sanctions ("Results") of the Conduct Procedure;
- c. any change to the Results that occurs prior to the time that such Results become final; and
- d. when such results become final.

**j. Appeals**

The Respondent or Complainant may submit an appeal to the Director of Student Conduct or designee in writing within five (5) Days of the date of the Notice of Outcome. All appeals will be

governed by the procedures set forth for Serious Violations in Chapter 11, Section III of this Code. Each party will be notified of the other party's appeal submission and outcome.

**k. Effective Date of Sanction(s)**

If either the Complainant or Respondent submits an appeal, the imposition of sanction(s) may be deferred during the duration of the appeal process in accordance with Chapter 11, Section IV of this Code.

## **Chapter 9. Recommendations and Determinations on Responsibility and Sanctions**

### **Section I. Determinations on Responsibility**

A determination by a Hearing Panel on responsibility or non-responsibility for the violation(s) charged shall be made in private and shall be by majority vote, based solely on the evidence presented at the hearing. The determination on responsibility must be announced at the hearing prior to making a recommendation on sanctions. The determination on responsibility must contain a brief summary of the evidence upon which the decision is based and shall specify appeal rights, including the time in which to appeal and the permitted grounds for the appeal.

### **Section II. Recommendations on Sanction(s)**

A determination by the Hearing Panel of responsibility on any Formal Charge shall be followed by a recommendation of an appropriate sanction(s). The prior conduct record of the Respondent shall be considered in determining a recommendation of the appropriate sanction(s). After private deliberation on the appropriate sanction(s), the Hearing Panel will announce the recommended sanction(s) at the hearing.

### **Section III. Determinations on Sanction(s)**

The Hearing Panel's determination on responsibility and recommendation on sanctions shall be transmitted to the Director of Student Conduct in the form of a brief written opinion, summarizing the facts upon which the determination of responsibility for the violation is based and the basis for the sanction recommended.

#### **a. Determinations by the Director of Student Conduct**

The Director of Student Conduct has the authority to Affirm or adjust the sanction(s) recommended by the Hearing Panel. The Director of Student Conduct shall make a determination on sanction(s) based on the Hearing Panel's recommendation and shall notify the Respondent of his or her determination in writing no later than ten (10) Days after the Hearing Panel's recommendation is made.

The written notification must contain the sanction(s) assigned, the due date(s) of the sanction(s), and the rationale upon which the determination is based. It shall also specify appeal rights, including the time in which to appeal and the permitted grounds for the appeal as set forth in Chapter 11 of this Code. This written determination shall become part of the Respondent's case file in the Dean of Students' Office.

#### **b. Determinations by the Vice Chancellor for Student Affairs**

When the Hearing Panel recommends a sanction of Expulsion, the Director of Student Conduct shall deliver that recommendation to the Vice Chancellor for Student Affairs, who shall make a final determination on the sanction of Expulsion. The Vice Chancellor for Student Affairs shall notify the Director of Student Conduct and the Respondent of his or her determination promptly in writing, but in any case no later than ten (10) Days after the Hearing Panel's recommendation is made.

The written notification must contain the sanction(s) assigned, the due date(s) of the sanction(s), and the rationale upon which the determination is based. It shall also specify appeal rights, including the time in which to appeal and the permitted grounds for the appeal as set forth in Chapter 11 of this Code. This written determination shall become part of the Respondent's case file in the Dean of Students' Office.

## Chapter 10. Sanctions

### Section I. Individual Sanctions

One or more of the following sanctions may be imposed upon a Respondent for violation of Conduct Rules. No Respondent is permitted to withdraw from Enrollment after being charged with a Serious Violation under the Code of Student Responsibility but before imposition of sanction(s) or a finding of non-responsibility.

1. **CONDUCT REPRIMAND:** Formal notice from the Director of Student Conduct or designee indicating that further conduct violations may result in a more severe student conduct action. A copy of the Reprimand becomes a part of the Respondent's conduct file.
2. **DEFINITE CONDUCT PROBATION:** A status in which a Respondent is deemed not to be in good conduct standing with the University for a definite period of time not less than the remainder of the semester in which the Probation is imposed. In the event a Respondent on Conduct Probation is found responsible for a violation of any Conduct Rule, Suspension or Expulsion from the University could result. Conditions restricting a Respondent's participation in campus activities may be imposed. The probationary status becomes part of the Respondent's conduct file.
3. **INDEFINITE CONDUCT PROBATION:** A status in which a Respondent is deemed not to be in good conduct standing with the University for an indefinite period of time. In the event a Respondent on Conduct Probation is found responsible for a violation of any Conduct Rule, Suspension or Expulsion from the University could result. Conditions restricting a Respondent's participation in campus activities may be imposed. Indefinite Probation remains in effect until the Respondent successfully petitions the Director of Student Conduct for reinstatement to good standing. The probationary status becomes part of the Respondent's conduct file.
4. **REMOVAL FROM UNIVERSITY HOUSING:** Loss of the privilege of living in campus housing. Removal may be for a fixed period of time (but not less than the remainder of the semester in which the Removal is imposed), or for an indefinite period. If the Removal is for an indefinite period, the Respondent may petition the Director of Student Conduct for restoration of the right not sooner than one calendar year after the Director of Student Conduct has approved the removal. Any sanction including Removal from University housing includes a trespass order from student housing for the duration of the sanction. Any cancellation fee, pro-rata refund, or return of deposit shall be assessed as set forth in the housing contract between the University and the student.
5. **DEFINITE SUSPENSION:** Separation of the Respondent from the University for a fixed period of not less than the remainder of the semester in which the Suspension is imposed. A sanction of Definite Suspension automatically includes a trespass order from University Premises, including student housing, for the duration of the Suspension. Violation of the terms of a Definite Suspension may subject the Respondent to additional sanctions pursuant to Chapter 5, Paragraphs (e) and (q) of this Code. Suspension for violation of Chapter 5, Paragraph (v) of this Code may include Suspension of access to University computing and electronic communication resources. Notification of the Suspension will appear on the Respondent's academic transcript and will remain until the end of the Suspension period. The Respondent's name will be added to the Suspension/Expulsion Database for the UNC System, where it will remain indefinitely. In order to re-enroll at the University at the conclusion of the Suspension term, the Respondent must reapply for admission to the University, but no Respondent may be readmitted to the University until after the Suspension period has ended.

6. **INDEFINITE SUSPENSION:** Separation of the Respondent from the University for a minimum of one calendar year after the Director of Student Conduct has approved the Suspension and thereafter until the Respondent successfully petitions the Director of Student Conduct in writing for reinstatement to good standing. A sanction of Indefinite Suspension automatically includes a trespass order from University Premises, including student housing, for the duration of the Suspension. Violation of the terms of an Indefinite Suspension may subject the Respondent to additional sanctions pursuant to Chapter 5, Paragraphs (e) and (q) of this Code. Notification of the Indefinite Suspension will appear on the Respondent's academic transcript until the date the Respondent is reinstated to good standing. The Respondent's name will be added to the Suspension/Expulsion Database for the UNC System, where it will remain indefinitely. If the Director of Student Conduct grants reinstatement, the Respondent may reapply for admission to the University, but no Respondent may be readmitted to the University until after the Director of Student Conduct has granted reinstatement.
7. **EXPULSION:** Expulsion is a permanent separation of the Respondent from the University. Expulsion for violation of this Code includes removal of access to University computing and electronic communication resources. Violation of the terms of Expulsion may subject the Respondent to arrest. The Respondent may petition the Chancellor in writing for the Expulsion to be rescinded, but not earlier than two years after the date on which the Expulsion takes effect. A Respondent who has been expelled from one constituent institution of The University of North Carolina system may not be admitted to another UNC System institution until the sanction of Expulsion has been rescinded by the institution that imposed the sanction. Notification will appear on the Respondent's academic transcript. The Respondent's name will be added to the Suspension/Expulsion Database for the UNC System, where it will remain indefinitely. The Respondent will be given a notice of trespass with respect to University premises.
8. **POST-ENROLLMENT AND POST-GRADUATION SANCTIONS:** A Respondent who commits a violation of this Code or is found responsible for violating this Code, but who graduates from UNC Charlotte before imposition of a sanction, is subject to (1) revocation of any degree awarded, (2) temporary or permanent withholding of the transcript for any degree earned, regardless of whether the degree has been awarded, and/or (3) having sanction(s) imposed as a condition of re-enrollment at the University.
9. **ADDITIONAL SANCTIONS:** The following sanctions may be imposed in addition to those listed in Chapter 5, Paragraphs (a) (1) through (8) of this Code:
  - a. Restitution for loss incurred by an individual or the University as a result of the Respondent's conduct violation;
  - b. Exclusion for a definite or indefinite period from all or a portion of any University premises, property, building(s) or residence area(s), as specified in the sanction;
  - c. Loss of driving and/or parking privileges on University Premises;
  - d. A Student Conduct fee not to exceed \$100;
  - e. Community service and/or participation in educational programs;
  - f. Restitution for expenses incurred by individuals or the University as a result of providing educational programs or other educational experiences related to the violation(s); or
  - g. Any other appropriate sanction as determined by the Director of Student Conduct.

Engaging in, or attempting to engage in any Conduct prohibited in Chapter 5 of this Code may result in Suspension or Expulsion from the University. Factors that may affect the severity of the sanction(s) may include the present demeanor and past conduct record of the Respondent, the nature of the incident, the severity of any damage, injury, or harm resulting from the incident, and whether the incident was motivated by bias based upon a person's

actual or perceived race; color; religion; age; national origin; ethnicity; gender, gender identity or expression; sexual orientation; disability; or veteran status.

Attempts to commit acts prohibited by this Code shall be punished to the same extent as completed violations.

## **Section II. Student Group or Student Organization Sanctions**

One or more of the following sanctions may be imposed on a Student Group or Organization responsible for violation of Conduct Rules. All sanctions require review and approval of the Director of Student Conduct or designee and may be altered, deferred, or suspended.

1. **REPRIMAND** is an official written notice of conduct violations. Repetition of violations that result in Reprimand of the Group or Organization within a period of two years shall automatically carry Registration Probation as a minimum sanction.
2. **REGISTRATION PROBATION** is given for a specific period of time. Further violations of the Code during the probationary period may result in Registration Suspension or Revocation. During the period of Registration Probation, the Organization is not considered in good conduct standing with the University. The Organization may seek and add members during this probationary period and may host other activities unless otherwise specified.
3. **REGISTRATION SUSPENSION** is the temporary removal of University recognition of a Student Organization for a definite period of time. During the period of Registration Suspension, the Organization is not considered in good conduct standing with the University. While under Suspension, the Organization may continue to occupy or hold property but may not seek or add members, hold or sponsor events in the University community, or sponsor or attend any events that are social in nature.
4. **REGISTRATION REVOCATION** is the permanent removal of University recognition for a Student Organization. Registration Revocation means that the Organization may not function at the University, participate in University programs, or utilize University facilities or services. Registration Revocation may be recommended by the Hearing Panel but can be imposed only by the Chancellor, following the review and approval of the Director of Student Conduct.
5. **ADDITIONAL GROUP OR ORGANIZATION SANCTIONS.** In addition to the sanctions set forth in this Section II above, any one or more of the following may be imposed:
  - a. Exclusion from intramural competition;
  - b. Restitution of loss to University or person;
  - c. Denial of use of University facilities for meetings or activities;
  - d. Suspension for rushing, recruiting, or intake process;
  - e. Loss of social privileges for no less than one month. The Group or Organization may not sponsor any activity, party, or function that is social in nature during the time parameters established;
  - f. Restitution for expenses incurred by individuals or the University as a result of providing educational programs or other educational experiences related to the violation(s); or
  - g. Any other appropriate Group or Organization sanction as determined by the Director of Student Conduct.

## **Section III. Interim Suspension**

### **1. Students**

When the University determines that the continued presence of a Respondent on the University campus or in University housing poses a substantial threat to others, or to the stability and

continuance of normal University functions, the Vice Chancellor for Student Affairs or a designee may suspend the Respondent for an interim period, pending the outcome of Conduct Procedures.

A Respondent who persists in disrupting a particular class in violation of Chapter 5, Paragraph (s) of this Code after a warning by the instructor may, in the discretion of the Vice Chancellor or designee, and provided other normal University functions are not at risk, be suspended from that class only, for an interim period pending the outcome of Conduct Procedures. An Interim Suspension becomes effective immediately without prior notice. The Vice Chancellor or designee may terminate the Suspension at any time prior to the outcome of Student Conduct Procedures.

A Respondent suspended on an interim basis shall be given an opportunity to appear personally before the Director of Student Conduct or designee within five (5) Days from the effective date of the Interim Suspension. The Director or designee shall consider the following issues only:

- a. the reliability of the information concerning the Respondent's conduct, including the matter of his or her identity; and
- b. whether the conduct in the surrounding circumstances reasonably indicates that the continued presence of the Respondent on the University campus, in the residence halls, or in the classroom poses a substantial threat to himself or herself, or to others, or to the stability and continuance of normal University functions, or to the normal conduct of the class.

Under certain circumstances, as a condition for termination of Interim Suspension and prior to scheduling Conduct Procedures, the Director of Student Conduct or designee may require that certain conditions be met, such as the Respondent's consent to completion of a medical or psychological evaluation to be arranged by the University. The Respondent shall ensure that the medical or psychological evaluation report or other requested report is delivered to the University promptly. Within five (5) Days after delivery of such report, the Respondent shall be given an opportunity to appear personally before the Director or designee. The Director or designee shall consider such report in making a decision whether to terminate the Interim Suspension prior to scheduling Conduct Procedures.

## **2. Student Groups or Organizations**

When the University receives a report of an alleged violation of this Code by a Student Group or Student Organization, the Vice Chancellor for Student Affairs or designee may suspend the activities of the Group or Organization pending the outcome of an investigation of the alleged Code violation. Such Interim Suspension may require the Group or Organization to cease its activities both on campus and off campus until the investigation has been completed and Conduct Procedures have been conducted.

## Chapter 11. Appeals

### Section I. Process

Within five (5) Days after delivery of the written determination on responsibility, or within five (5) Days after delivery of the written determination on sanctions, as set forth in Chapter 9 of this Code, the Respondent or Complainant (under the process set forth in Chapter 8 of this Code) (hereinafter collectively, Appellant) may submit written rationale for appeal of the decision on responsibility and/or the decision on sanctions to the Director of Student Conduct.

Appeals will be considered only if they are based on the following grounds:

1. a violation of due process; or
2. a material deviation from Substantive and Procedural Standards adopted by the Board of Governors, set forth in UNC Board of Governors' Policy 700.4.1.

### Section II. Minor Violations

For appeals of determinations on Minor Violations, the Director of Student Conduct or designee will immediately forward appeals meeting the requirements set forth in this Chapter 11, Section I, along with the record of the hearing on appeal, to the Vice Chancellor for Student Affairs. Appeals not meeting the requirements set forth in this Chapter 11, Section I, will not be considered.

#### a. Appeal to Vice Chancellor for Student Affairs

The Vice Chancellor for Student Affairs shall decide appeals based upon the record of the hearing and the Respondent's written appeal.

The Vice Chancellor for Student Affairs shall notify the Respondent within a reasonable time in writing of the decision on appeal. The decision may:

1. Affirm the finding of responsibility and the sanction(s);
2. Affirm the finding of responsibility and reduce but not eliminate the sanction(s); or
3. Remand the case to the same or a new Hearing Panel.

The Vice Chancellor for Student Affairs shall send copies of the determination on the appeal to the Respondent and to the Director of Student Conduct. A decision of the Vice Chancellor for Student Affairs Affirming the finding shall be final and conclusive, except that the Respondent may appeal the decision to the Chancellor under the limited circumstances set forth in this Chapter 11, Section II.

If the case is remanded to the Hearing Panel, the Conduct Procedures set forth in Chapter 7 and subsequent procedural provisions of this Code shall apply.

#### b. Appeal to Chancellor

The decision of the Vice Chancellor for Student Affairs shall be final and conclusive, and the sanctions will be imposed as directed; provided, however, that a Respondent who believes that the rights set forth in Section 502D(3) of The Code of the University of North Carolina (violation of due process or material deviation from Substantive and Procedural Standards adopted by the Board of Governors) have been violated may file a notice of appeal to the Chancellor. The notice of appeal must be in writing and must specify the rights alleged to have been violated and the reasons for such allegation. No such notice is effective unless received by the Chancellor within five (5) Days after the Respondent receives the decision of the Vice Chancellor for Student Affairs. The Chancellor shall notify the Respondent in writing within a reasonable time of the decision on the appeal. The decision may:



1. Affirm the finding of responsibility and the sanction(s);
2. Affirm the finding of responsibility and reduce but not eliminate the sanction(s); or
3. Remand the case to the same or a new Hearing Panel.

The Chancellor shall send copies of the decision to the Respondent and to the Director of Student Conduct. The decision of the Chancellor is a final decision.

If the case is remanded to the Hearing Panel, the Conduct Procedures set forth in Chapter 7 and subsequent procedural provisions of this Code shall apply.

### **Section III. Serious Violations**

For appeals of decisions on Serious Violations, the Director of Student Conduct will immediately forward appeals meeting the requirements set forth in this Chapter 11, Section I, along with the record of the hearing on appeal, to the Vice Chancellor for Student Affairs (for sanctions including Suspension) or to the Chancellor (for sanctions including Expulsion).

#### **a. Appeal to Vice Chancellor for Student Affairs or Chancellor**

The Vice Chancellor for Student Affairs (for sanctions including Suspension) or the Chancellor (for sanctions including Expulsion) shall decide appeals based upon the record of the hearing and the Appellant's written appeal.

The Vice Chancellor for Student Affairs (for sanctions including Suspension) or Chancellor (for sanctions including Expulsion) shall notify both the Respondent and Complainant (if applicable) within a reasonable time in writing of the decision on appeal. The decision may:

1. Affirm the finding of responsibility and the sanction(s);
2. Affirm the finding of responsibility and reduce but not eliminate the sanction(s); or
3. Remand the case to the same or a new Hearing Panel.

The Vice Chancellor for Student Affairs or Chancellor shall send copies of the decision on the appeal to the Respondent, Complainant (if applicable), and to the Director of Student Conduct. A decision of the Vice Chancellor for Student Affairs or Chancellor Affirming the finding shall be final and conclusive, except that the Respondent or Complainant may appeal the decision to the Board of Trustees under the limited circumstances set forth in this Chapter 11, Section III.

If the case is remanded to the Hearing Panel, the Conduct Procedures set forth in Chapter 7 (or the Sexual Misconduct, Relationship Violence, and Stalking Complaint Procedures set forth in Chapter 8, if applicable) and subsequent procedural provisions of this Code shall apply.

#### **b. Appeal to Board of Trustees**

The decision of the Vice Chancellor for Student Affairs (for sanctions including Suspension) or the Chancellor (for sanctions including Expulsion) shall be final and conclusive, and the sanctions will be imposed as directed; provided, however, that a Respondent or Complainant who believes that the rights set forth in Section 502D(3) of The Code of the University of North Carolina (violation of due process or material deviation from Substantive and Procedural Standards adopted by the Board of Governors) have been violated may file a notice of appeal from a decision imposing a sanction of Suspension or Expulsion to the Board of Trustees.

The notice of appeal must be in writing and must specify the rights alleged to have been violated and the reasons for such allegation. No such notice is effective unless received by the Board of Trustees within five (5) Days after the Respondent and Complainant (if applicable) receive the decision of the Vice Chancellor for Student Affairs or Chancellor. The Board of Trustees shall notify the Respondent and

Complainant (if applicable) in writing within a reasonable time of the decision on the appeal. The decision may:

1. Affirm the finding of responsibility and the sanction(s);
2. Affirm the finding of responsibility and reduce but not eliminate the sanction(s); or
3. Remand the case to the same or a new Hearing Panel.

The Board of Trustees shall send copies of the decision to the Respondent, Complainant (if applicable), and to the Director of Student Conduct. If the case is remanded to the Hearing Panel, the Conduct Procedures set forth in Chapter 7 (or the Sexual Misconduct, Relationship Violence, and Stalking Complaint Procedures set forth in Chapter 8, if applicable) and subsequent procedural provisions of this Code shall apply.

No appeal to the President of the University of North Carolina is permitted. When the sanction is Expulsion, the Respondent may appeal the Board of Trustees' decision to the Board of Governors.

#### **Section IV. Deferral of Sanctions**

At the discretion of the Director of Student Conduct, the imposition of a sanction normally will be deferred during the duration of an appeal but may be imposed immediately after the hearing if:

1. The Respondent has been found responsible for an act which resulted or foreseeably could have resulted in personal injury to another;
2. The Respondent has been found to be in possession of a Weapon;
3. The Respondent has been found responsible for the forgery or falsification of a University document;
4. The Respondent has committed an additional violation of this Code or has violated the terms of a previous conduct sanction; or
5. The Respondent has admitted responsibility for a violation of this Code.

## Chapter 12. Conduct Files and Records

- A. Academic transcripts shall reflect sanctions as provided in Chapter 10 of this Code.
- B. The conduct files, including audio recordings or transcripts of hearings, of Students charged with violations of the Code will be retained as conduct records for eight years from the date of the letter providing notice of final conduct action. Conduct records may be retained for longer periods of time or permanently, as specified in the sanction. Conduct records including the sanction of Expulsion shall be retained permanently. Conduct records designated as "permanent" shall not be voided except under very rare circumstances with unusual and compelling justification.
- C. Students may make copies of their conduct files in accordance with University Policy 402, Student Records.
- D. The Director of Student Conduct, or designee in consultation with the Director, may void conduct records before the expiration of the eight (8) year retention period only under very rare circumstances, upon written petition of the Respondent showing unusual and compelling justification. Factors to be considered in review of such petition include, but are not limited to:
  - 1. The present demeanor of the Student;
  - 2. The conduct of the Student subsequent to the violation; and
  - 3. The nature of the violation and the severity of any damage, injury, or harm resulting from it.
- E. Denials of petitions to void conduct records shall be appealable to the Vice Chancellor for Student Affairs, who will override the decision of the Director of Student Conduct only if the denial of the petition is found to be without logical basis. The time limits and form for appeals as set forth in Chapter 11 shall be applicable.

## Chapter 13. Directory of Student Affairs Contacts

Vice Chancellor for Student Affairs, 219 King Building, 704-687-0350

Dean of Students Office, 217 King Building, 704-687-0345

Office of Student Conduct, 217 King Building, 704-687-0336

- Associate Dean of Students and Director of Student Conduct
- Assistant Directors of Student Conduct

Title IX Coordinator, 361 Cato Hall, 704-687-6130

Student Government Association Judicial Branch, Student Government and Organizations Complex (212 Student Union)

Chief Justice/ Student Judicial Board, 704-687-7169

Office of the Attorney General, 704-687-7174

Office of the Student Counsel, 704-687-7175

### Revision History:

- Revised August 27, 1999
- March 1, 2001
- July 1, 2003
- April 10, 2006
- August 24, 2008
- October 7, 2008
- Updated August 27, 2009
- Revised November 29, 2010
- Revised January 20, 2011
- Revised February 18, 2014, corrected March 31, 2014, corrected May 13, 2014, effective May 19, 2014
- Revised August 14, 2014, effective August 18, 2014

**Authority:** Chancellor

**Responsible Office:** Office of Student Affairs

### Related Resources

- Dean of Students Office;
- Office of Disability Services;
- Title IX Office;
- The Code of The University of North Carolina, Section 502 D(3);
- UNC Board of Governors Policy 700.4.1
- UNC Board of Governors Regulation 700.4.1.1[R]
- UNC Board of Governors Policy 700.4.2
- University Policy 706, Alcoholic Beverages
- University Policy 601.13, Interference with University Operations
- University Policy 402, Student Records

- University Policy 711, Program to Prevent Use of Illegal Drugs and Alcohol Abuse
- University Policy 503, Fighting Words Harassment
- University Policy 802, Conduct at Speech Events
- University Policy 407, The Code of Student Academic Integrity
- Disposition of Appeal: Instructions to General Counsel
- Notice of Attorney or Non-Attorney Advocate Representation