

Interim Procedures for Sexual Misconduct (including Sexual Assault), Harassment or Intimidation, and Discrimination Cases Involving Students

January 2012

Summary

In response to recent guidance published by federal authorities, including the U.S. Department of Education's Office for Civil Rights 2011 "Dear Colleague" letter, the Dean of Students' Office, in coordination with the University's Title IX Officer, is reviewing campus procedures for responding to allegations of sexual misconduct, harassment/intimidation, and/or discrimination brought against students.

Throughout the Fall 2011 term, the *Instrument of Student Judicial Governance* ("Instrument") was interpreted and applied in a manner that incorporates the federal requirements.

As the Spring 2012 term begins, this document memorializes the procedures, including modifications to existing policies, that will be utilized to address any charges brought against students pursuant to sections II.C.1.b. (sexual misconduct), II.C.1.c. (harassment or intimidation based upon a protected classification, as described in the University's Policy on Prohibited Harassment and Discrimination¹), and II.C.1.e. (discrimination) of the *Instrument*. These provisions and other relevant procedures may be found at <http://instrument.unc.edu>.

Initial Review

Allegations of sexual misconduct, harassment/intimidation, or discrimination brought against students are subject to review and investigation by the Office of the Dean of Students and may be referred to the applicable Student Attorney General for consideration of formal charges.

- I. *Information*: Both the person alleging that he/she was the victim of an offense (hereinafter referred to as "Complainant") and the student alleged to have engaged in the misconduct (hereinafter referred to as "Accused Student") will be offered appropriate support services, as well as information about applicable University policies, including these Interim Procedures for Sexual Misconduct (including Sexual Assault), Harassment or Intimidation, and Discrimination Cases Involving Students (hereinafter referred to as "Interim Procedures").
- II. *Confidentiality*: Allegations of sexual misconduct, harassment or intimidation, and discrimination will be handled in a manner that honors the Complainant's needs and preferences regarding confidentiality to the extent possible, consistent with the University's responsibilities and applicable legal requirements.

¹ <http://www.unc.edu/campus/policies/harassanddiscrim.pdf>

III. *Interim Action:* The rights of all students will be respected. These Interim Procedures, in conjunction with the Instrument, establish the current standard procedures for addressing allegations of sexual misconduct, harassment or intimidation, and discrimination against students.

The University reserves the right, however, to implement an individualized response for the Accused Student pursuant to the University's Emergency Evaluation & Action Committee Policy and Procedures², if, in the University's sole judgment, this is warranted, based on the status of the Accused Student, the seriousness of the alleged offense, and/or the potential for serious disruption or danger to members of the University community.

IV. *Retaliation:* Retaliation against a person because they in good faith file a complaint or cooperate in an investigation of a complaint of sexual misconduct, harassment, or discrimination violates the law and is therefore strictly prohibited. Any person who retaliates against another person for exercising rights in good faith under the Instrument or these Interim Procedures will be subject to appropriate and prompt corrective action which may include disciplinary action.

V. *Resources:* There are numerous campus and community resources available to persons experiencing or affected by sexual misconduct, harassment or intimidation, and discrimination, including the following:

	On Campus	Off Campus
24-hour response advocacy	Family Violence Prevention Center and the Orange County Rape Crisis Center advocates are trained to respond to cases on UNC-CH's campus	<p>Family Violence Prevention Center http://fvpcoc.org/ 919-929-3872</p> <ul style="list-style-type: none"> • Hospital and police accompaniment • Hotline <p>Orange County Rape Crisis Center www.occcc.org 919-935-4783; 1-800-WE-LISTEN</p> <ul style="list-style-type: none"> • Hospital and police accompaniment • Hotline
Advocacy & Options Counseling	<p>Resource & Information Summary http://safe.unc.edu</p> <p>Office of the Dean of Students http://deanofstudents.unc.edu 919-966-4042</p> <ul style="list-style-type: none"> • Academic advocacy • Housing advocacy • "No contact" orders 	<p>Family Violence Prevention Center</p> <ul style="list-style-type: none"> • Personal advocacy • Accompaniment to emergency room, police station, etc. • Court advocacy • Emergency shelter placement <p>Orange County Rape Crisis Center</p> <ul style="list-style-type: none"> • Personal advocacy • Accompaniment to emergency room, police station, etc.

² <http://www.unc.edu/campus/policies/Emergency%20Evaluation%20and%20Action%20Committee%20Policy-Procedures.pdf>

	On Campus	Off Campus
	<ul style="list-style-type: none"> Honor court assistance Options counseling <p>LGBTQ Office http://lgbtq.unc.edu 919-843-5376</p> <ul style="list-style-type: none"> Support and referral services <p>Housing & Residential Education</p> <ul style="list-style-type: none"> Options counseling Safe housing 	<ul style="list-style-type: none"> Court advocacy
Police	<p>Department of Public Safety http://www.dps.unc.edu/dps 919-962-8100</p> <ul style="list-style-type: none"> Takes reports, including blind reports, however must investigate all reports it receives Participates in legal and judicial action 	<p>Carrboro Police Department http://www.townofcarrboro.org/pd/default.htm 919-918-7397</p> <ul style="list-style-type: none"> Takes reports, including blind reports Investigates and participates in legal or judicial action <p>Chapel Hill Police Department* http://nc-chapelhill.civicplus.com/index.asp?NID=70 919-968-2760</p> <ul style="list-style-type: none"> Takes reports, including blind reports Investigates and participates in legal or judicial action <p>Orange County Sheriff's Office http://www.co.orange.nc.us/sheriff/index.htm 919-644-3050</p> <ul style="list-style-type: none"> Takes reports, including blind reports Investigates and participates in legal or judicial action
Medical Attention	<p>Campus Health Services http://www.studenthealth.unc.edu/medservices/index.html 919-966-3650 / After hours: 919-966-2281</p> <ul style="list-style-type: none"> Confidential care for students Rape exams/evidence collection Screening and treatment of STDs Emergency contraceptives Treatment may be paid for by the Victim's Assistance Fund 	<p>UNC Hospital Emergency Room 919-966-4721</p> <ul style="list-style-type: none"> Rape exams After hours medical care Emergency contraceptives Screening and treatment of STIs Treatment may be paid for by the Victim's Assistance Fund
Counseling	<p>Counseling and Wellness Services http://cws.unc.edu/ 919-966-3658</p> <ul style="list-style-type: none"> Individual & group counseling & referral 	<p>Family Violence Prevention Center</p> <ul style="list-style-type: none"> Crisis counseling Support groups <p>Orange County Rape Crisis Center</p> <ul style="list-style-type: none"> Crisis counseling Support groups

Investigation and Adjudication

Allegations of sexual misconduct, harassment or intimidation, and discrimination against students will be investigated and, as appropriate, adjudicated under the *Instrument*, with the modifications detailed in the paragraphs below in response to the requirements of OCR's 2011 Dear Colleague letter. The UNC Honor System, guided by the Judicial Programs Officer and other University personnel acting in the scope of their assigned duties, shall interpret the *Instrument* in a manner that is consistent with applicable legal authority and that provides equitable rights for all parties. The goal is to promote prompt, thorough, and effective complaint resolution in a procedurally fair manner.

- I. *Support Persons.* Both the Complainant and the Accused Student shall have the right to have a support person present during the investigative process, the original hearing, any evidentiary proceeding, or any appeal. Individuals who are witnesses to the alleged offense may not serve as a support person for either party.
- II. *University Hearings Board.* Cases brought pursuant to Sections II.C.1.b., II.C.1.c., or II.C.1.e. shall be heard by the University Hearings Board exercising original jurisdiction. The University Hearings Board is comprised of faculty, staff, and students and shall be constituted as described in Section E.1.b. of Appendix C to the *Instrument*.
- III. *Open Hearings.* In cases brought pursuant to Sections II.C.1.b., II.C.1.c., or II.C.1.e., the Complainant shall have a right to a closed hearing (i.e., not open to the public) when requested in writing (notwithstanding any request to the contrary by the Accused Student).
- IV. *Preponderance of the Evidence.* In cases brought pursuant to Sections II.C.1.b., II.C.1.c., or II.C.1.e., the burden of proof shall be preponderance of the evidence, which requires the Complainant to demonstrate that it is "more likely than not" that the Accused Student committed the offense.
- V. *Witnesses and Evidence.* Both the Complainant and the Accused Student shall have an equal opportunity to present witnesses and to testify and present evidence before the hearing panel.
- VI. *Questioning.* In cases brought pursuant to Sections II.C.1.b., II.C.1.c., or II.C.1.e., neither the Complainant nor the Accused Student shall directly address questions or statements to the other. Questions for the parties shall be limited to the appropriate Student Attorney General, defense counsel, and/or members of the University Hearings Board.
- VII. *Appeals from Original Proceedings.* A Complainant in a case brought pursuant to Sections II.C.1.b., II.C.1.c., or II.C.1.e. shall have the same rights of appeal as the Accused Student. Either the Complainant or the Accused Student may submit a written appeal petition within the time period established in Appendix C, Section I.1.b.i. of the *Instrument*, which shall be based on one or more of the following grounds for appeal:
 1. *Sufficiency of the Evidence.* For purposes of evaluating the sufficiency of the evidence, the appellate panel shall consider only the evidence contained in the record made

before the original hearing panel and shall determine if there was a reasonable basis for the decision. If it is determined that the evidence was sufficient to support the decision, the appellate panel shall sustain the original verdict. If it is determined that the evidence is not sufficient to sustain the original verdict, it shall remand the case for a new proceeding.

2. **Violation of Basic Rights.** For purposes of evaluating whether the basic rights of the Complainant or the Accused Student as established under the *Instrument*, this document, or other applicable authority were violated, the appellate panel shall consider the relevant evidence contained in the record made in the original court and any further testimony it deems pertinent by the Complainant, the Accused Student, the appropriate Student Attorney General (or designee), the defense counsel, the presiding officer and members of the original hearing panel, and any witness with knowledge of the alleged violation. The appellate panel shall then determine, by a preponderance of the evidence, whether the hearing panel having original authority or the Office of the Student Attorney General, violated the rights of the appealing party and, if so, whether the violation prejudiced the outcome of the original hearing so as to necessitate a remand for a new hearing.
3. **Insufficient or Excessive Sanction.** For purposes of evaluating whether the sanction imposed by the original hearing panel was insufficient or excessive, the appellate panel shall consider only the evidence contained in the record made in the original court or hearing panel, and shall sustain that court or panel's determinations provided there is a reasonable basis for the sanctions imposed and, if not, shall impose a lesser or greater sanction as it determines appropriate from within the sanctions identified in Section III of the *Instrument*.

All appeal petitions, whether submitted by the Complainant or the Accused Student, shall be reviewed in the manner and based on the requirements set forth in Appendix C, Section I of the *Instrument*. Appeals under this section shall be heard by separately constituted University Hearings Boards, as provided in Section I.1.a. of Appendix C to the *Instrument*.

VIII. *Petition for Further Review by the Chancellor from Determinations of the University Hearings Board.* A Complainant in a case brought pursuant to Sections II.C.1.b., II.C.1.c., or II.C.1.e. shall have the same right to petition for further review by the Chancellor of a decision by the University Hearings Board as the Accused Student. Either the Complainant or the Accused Student may submit a petition for review within the time period established in Appendix C, Section I.2.b.i. of the *Instrument*, which shall be based on one or more of the following grounds for appeal:

1. Denial of fundamental procedural rights under policies of the Board of Trustees or Board of Governors, including rights to due process and a fair hearing, the presumption of innocence until found guilty, the right to know the evidence and to face witnesses testifying against the

student, and the right to such advice and assistance in the individual's defense as permitted under this Instrument; provided that an appeal on such grounds must have been raised as a basis for appeal to the University Hearings Board or stem from denial of the specified rights with regard to the proceedings of the University Hearings Board on appeal.

2. Insufficient or excessive sanction where, in the case of a petition filed by the Accused Student, the sanction imposed is permanent suspension or expulsion or, in the case of a petition filed by the Complainant, the sanction imposed is a sanction other than permanent suspension or expulsion.
- IX. *Request for New Hearing Based on Newly Discovered Evidence.* A Complainant or an Accused Student may file a detailed written petition for a new hearing with the Judicial Programs Officer on the basis of newly discovered evidence, provided that there is a reasonable basis for concluding that the new evidence might have altered the outcome of the original hearing, and that the new evidence was not known to the party seeking relief at the time of the original hearing or appeals in the case. A request for a new hearing shall be reviewed in the manner and based on the requirements set forth in Appendix C, Section I.3., of the *Instrument*.
- X. *Timely Resolution.* All reasonable efforts will be undertaken to resolve cases brought pursuant to Sections II.C.1.b., II.C.1.c., or II.C.1.e. in a prompt manner (approximately 60 days), notwithstanding the provision for longer periods of time within the Instrument.
- XI. *Notification.* Both the Complainant and the Accused Student will be timely informed of the outcome of the complaint.

Training and Support

Students and employees involved in the investigation and adjudication of sexual misconduct, harassment or intimidation, and discrimination cases shall receive training on the procedural and substantive requirements applicable to these cases prior to investigating and adjudicating such cases. In addition, the University shall provide training to investigative and defense counsels and University Hearings Board members designated to participate in sexual misconduct, harassment or intimidation, and discrimination cases prior to participating in such cases. Counsels will be provided access to advisors who may assist them in evaluating evidence and case preparation.