

**WAKE FOREST UNIVERSITY
SEXUAL MISCONDUCT POLICY
2009-2010**

Wake Forest University expects all members of its community to act in respectful and responsible ways toward each other. Acts of sexual misconduct constitute grievous violations of university policy. Rape and sexual assault are crimes of violence which are subject to prosecution. It is the responsibility of each individual in the University community to become educated about such acts and their consequences. Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct. They may include, but are not limited to: expulsion, suspension, disciplinary probation, specialized treatment off-campus and/or other educational sanctions as deemed appropriate by the hearing officer.

I. FORMS OF ABUSIVE BEHAVIOR

- ◆ **Sexual Misconduct:** *Sexual Misconduct is defined as any act of a sexual nature perpetrated against an individual without effective consent or when an individual is unable to freely give consent. Sexual misconduct includes, but is not limited to:*

Attempted or completed intercourse or penetration (anal, oral or vaginal), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective consent. This includes vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

Sexual touching (including disrobing or exposure), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective consent. Sexual touching includes any contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts.

Sexual exploitation, defined as taking non-consensual, unjust or abusive sexual advantage of another, for his/her own advantage or benefit; or to benefit or advantage anyone other than the one being exploited. Sexual exploitation encompasses a wide range of behaviors which may include but are not limited to:

- Inducing incapacitation with the intent to rape or sexually assault another student;
- Non-consensual video or audio-recording of sexual activity;
- Allowing others to observe a personal act of consensual sex without knowledge or consent of the partner;
- Engaging in Peeping Tommery (voyeurism);
- Knowingly transmitting an STD or HIV to another student;
- Prostituting another student (i.e. - personally gaining money, privilege, or power from the sexual activities of another student)

- ◆ **Stalking (according to NC Statute 14-277.3):** Occurs when a person willfully on more than one occasion follows or is in the presence of another person without legal purpose and with the intent to cause death or bodily injury or with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury.

If committed with the intent to cause reasonable fear of death or bodily injury, the following examples **MAY** constitute stalking:

- Unwanted and/or threatening mail, phone calls, email, etc.
 - Persistent physical approaches and/or requests for dates, meetings, etc.
 - Following a person or coincidentally showing up at places a person frequents
 - Waiting outside a person's residence, school, or place of employment
 - Vandalism/destruction of a person's personal property
 - Breaking into a person's car or residence
- ◆ **Cyberstalking (according to NC Statute 14-196.3):** Occurs when a person uses electronic mail or electronic communication to convey any words or language threatening to inflict bodily harm to any person, or physical injury to the property of any person, or for the purpose of extorting money or other things of value from any person; to communicate to another repeatedly, for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person; to knowingly make any false statement concerning death, injury, illness, disfigurement, indecent conduct, or criminal conduct of the person electronically mailed or of any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass.

If committed with the intent and for the purpose of abusing, annoying, threatening, terrifying, harassing or embarrassing, the following examples **MAY** constitute cyberstalking:

- Unwanted/unsolicited e-mail
- Unwanted/unsolicited talk request in chat rooms
- Disturbing messages on on-line bulletin boards
- Unsolicited communications about a person, their family, friends, acquaintances, and co-workers
- Identity theft (using someone's social security number to obtain credit cards fraudulently in their name)
- Sending/posting disturbing messages with another user name

II. TERMINOLOGY

- ◆ **Effective consent:** The University's definition of sexual misconduct mandates that each participant obtains and gives effective consent in each instance of sexual activity. Effective consent is informed, freely and actively given, mutually understandable words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. In the absence of mutually understandable words or actions it is the responsibility of the initiator, that is, the person who wants to engage in the specific sexual activity, to make sure that they have consent from their partner(s). Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to do the same act, in the same way, at the same time, with each other. Relying solely upon non-verbal communication can lead to miscommunication. It is important not to make assumptions. If confusion or ambiguity on the issue of consent arises anytime during the sexual interaction, each participant should stop and verbally clarify their willingness to continue.
- Consent may not be inferred from silence, passivity or lack of active resistance alone.
 - A current or previous dating or sexual relationship with the respondent (or anyone else) may not, in itself, be taken to imply consent.

- Consent cannot be implied by attire, or inferred from the buying of dinner or the spending of money on a date.
- Consent to one type of sexual act may not, in itself, be taken to imply consent to another type of sexual act.
- Consent has an expiration date. Consent lasts for a reasonable time, depending on the circumstances.
- Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly; upon clear communication, all sexual activity must cease.
- Consent which is obtained through the use of fraud or force, whether that force is physical force, threats, intimidation, or coercion, is ineffective consent. Intimidation or coercion is determined by reference to the reasonable perception of a person found in the same or similar circumstances.
- Consent may never be given by:
 - Minors to legal adults
 - Mentally disabled persons
 - Persons who are physically incapacitated as a result of alcohol or other drugs or who are unconscious or otherwise physically helpless. Incapacitation means being in a state where a person lacks the capacity to appreciate the nature of giving consent to participate in sexual activity.
- One may not engage in sexual activity with another who one knows, or should reasonably have known, is physically incapacitated.
- The use of alcohol or other drugs can have unintended consequences. Alcohol or other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and effectively given. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of the use of alcohol or drugs on another's ability to give consent. Being intoxicated or high does not diminish one's responsibility to obtain consent and is never an excuse for sexual misconduct.

◆ **Electronic communication:** Any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature, transmitted in whole or part by a wire radio, computer, electromagnetic, photoelectric, or photo-optical system.

◆ **Electronic mail:** The transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

III. LIMITED IMMUNITY

The University considers the reporting and adjudication of sexual misconduct cases on campus to be of paramount importance. The University does not condone underage drinking. However, the University will extend limited immunity from sanctioning in the case of illegal alcohol use to victims and to those reporting incidents and/or assisting the victims of sexual misconduct. Limited immunity means that, depending on the nature of the victim's or the reporting student's violation, it will still be dealt with by the University, through education or counseling, if possible.

GUIDELINES AND PROTOCOLS RELATED TO WAKE FOREST UNIVERSITY'S SEXUAL MISCONDUCT POLICY

On college campuses, the great majority of sexual assaults are perpetrated by someone the victim knows casually or sometimes quite well. In addition to the responses of fear, shame, grief and anger, a victim may also feel very confused about their own behaviors. They may wonder whether or not their behavior "caused" the assault. Sometimes they are not even aware that they have been assaulted until weeks or months later. This confusion may keep them from taking action to obtain medical care, to report the incident, or to pursue legal or judicial action. They may tell no one about the assault and therefore struggle alone with their feelings.

The University encourages all members of the Wake Forest community to be aware of both the consequences of sexual assault and the options available to victims, as well as university guidelines applicable to both victims and accused students. University guidelines and protocols are listed below.

I. SUGGESTED ACTIONS

A. Seek Medical Assistance

It is crucial to obtain medical attention as soon as possible to determine the possibilities of physical injury, to prevent or treat sexually transmitted diseases (such as HIV), and to prevent pregnancy. The Wake Forest University Student Health Service is open 24 hours when the University is in session and can perform a preliminary physical examination and other tests, including a urine drug screen for the presence of sedative drugs such as Rohypnol or GHB ("date-rape drugs"). The morning-after pill is also available at the Student Health Service for students who are interested in this option. The Student Health Service is committed to protecting student confidentiality at all times.

It is also important to consider having an evidence collection kit (or "rape kit") completed within 72 hours, should the victim decide that they might want to file legal or judicial charges, either immediately or at a later date. In order to preserve evidence, the victim should avoid showering, bathing, going to the bathroom or brushing their teeth. They should also wear the same clothing or take the clothes they were wearing during the assault in a paper bag (not plastic) to the hospital. However, an evidence collection kit can still be completed even if the victim has showered or bathed. Student Health Service does not administer the evidence collection kit, though they will refer a victim to emergency rooms at Forsyth Medical Center or Wake Forest University Baptist Medical Center, or the victim may choose to go directly to the hospital initially. There, a physician will briefly screen the victim, and a forensic nurse trained in evidence collection procedures will conduct the examination, collecting hair, fluid and tissue samples. The victim may be accompanied by a friend, the CARE Coordinator (Professional Victim's Advocate) or a PREPARE Student Advocate, a Wake Forest student who has received training in working with other students who have been sexually assaulted. (PREPARE stands for the Policy Group for Rape Education, Prevention and Response, a student organization composed of students, faculty and administrative staff that provides campus prevention programs and consultation regarding University policy on sexual misconduct.) The hospital will also call a Victim's Advocate from the Sexual Assault Response Program of Family Services, Inc., a non-profit organization in Winston-Salem, to meet a victim at the hospital and assist them with any needs, as well as accompany them through the examination. See the listing of important contacts to reach any of these resources. When obtaining an evidence collection kit, students have the option of filing an official police report immediately or having a "Jane Doe kit" collected which allows the evidence to remain anonymous until the student chooses to make an official

police report. The cost of the evidence collection kit can often be paid for confidentially through funds provided by the state of North Carolina.

B. Obtain Information and Emotional Support

It is important that victims receive the support and information they need to make considered decisions about how to proceed. There are a number of resources available to students at every point. The CARE Coordinator is available on a 24-hour basis to consult with a victim on the phone, to accompany them to Student Health or to the hospital and to provide information about their legal and judicial options. University Counseling Center staff members are also available on a 24-hour basis and can help victims sort through their feelings and begin the recovery process. Sometimes students prefer to talk with other students and may contact a PREPARE Student Advocate who can also assist with these issues. Students may also choose to contact a member of the Campus Ministry staff or the Residence Life and Housing staff, including student resident advisers who are familiar with campus referral resources. Student resident advisers are required to submit a written, confidential situational report to their supervisors. However, all Residence Life and Housing staff members will protect a victim's confidentiality. An off-campus option for emotional support is to contact a Victim's Advocate through the Sexual Assault Response Program's 24-hour crisis line. All of these resources adhere to stringent levels of confidentiality. (See the listing below to contact any of these resources.)

Suggestions if you feel that you or someone you know is being stalked

- Don't try to handle the situation on your own. Call University Police by dialing 911 on campus, or 758-5591 off campus.
- Keep a journal of all incidents with specific information on date, time, place, event, and any witnesses to the incident.
- Save any evidence (i.e. notes, gifts, objects, photos, printed email messages, and voice messages.)
- Don't walk or ride alone, and alter your travel routes and daily routines.

C. Consider Reporting the Assault

Victims may report an incident of sexual misconduct either directly to University Police or the Judicial Officer for incidents that occur on-campus, or the Winston-Salem Police for incidents that occur off-campus. At Wake Forest, a student may elect to meet with the University Police Detective for an informal discussion prior to making a decision to file charges of any kind. No investigation will be conducted without the victim's permission. The Detective may also coordinate any interaction with Winston-Salem Police that is needed. Victims have three options for reporting:

1) On-Campus. Victims are strongly encouraged to report an incident of sexual misconduct to the University Judicial System, if the alleged assailant is thought to be a Wake Forest student. The University Judicial System is not a substitute for instituting criminal or civil action, though University procedures will be postponed if civil or criminal actions are initiated. Interim suspension authority may be exercised until external court matters have been resolved.

At Wake Forest, a special judicial process has been established to address complaints of sexual misconduct (see "Hearing Practices for Students before University Officers" in the *Guide to Student Government*). Complaints should be submitted to the office of the University Judicial Officer, who investigates all complaints and informs the complainant about the judicial process.

The victim has the right to receive notification, options, and assistance in changing academic and living situations after an alleged sexual assault incident, if so requested and if such changes are reasonably available. Prior to the hearing, orders may also be issued to prevent outside contact between the accused student, acquaintances, witnesses, and the complaining party. The hearing is held privately and confidentially before a University hearing officer. The University hearing officer may select a four-member advisory panel of students, faculty or administrators to assist in hearing the case.

Both the victim and the accused student may be represented by a student adviser at the hearing. The victim may also choose to be accompanied at the hearing by a support person who can be a Wake Forest student, faculty or staff member

Issues of relevancy, necessity, and the reliability of testimony are determined by the University hearing officer. Irrelevant sexual history may not be discussed during the hearing. The University officer must be persuaded the charges are true in order to find the student responsible for the conduct charged.

- ***Jurisdiction.***

In keeping with its historic concern for students individually and corporately, Wake Forest has a legitimate interest in their welfare in and out of class, on campus and off. The University is concerned with student actions that are inconsistent with obligations to the educational community. When, in the opinion of the University, the conduct of a student at any place is reprehensible or detrimental to the best interest of that student, his or her fellow students, or the University, appropriate disciplinary action will be taken.

The University is concerned with the conduct of students beyond the campus. For many reasons, including the obvious impossibility of controlling off-campus behaviors, it does not assume supervisory responsibility for off-campus activities, nor does the University seek or support special treatment of its students who may be apprehended for violation of civil law. It does regulate off-campus events of University-approved student organizations and insists that, at these events and elsewhere, reason and responsibility characterize student conduct. More importantly, it encourages a sense of propriety and an ideal of personal dignity to guide students in their associations and their behavior.

Frequently, students attend or participate in events sponsored by or hosted by student organizations at other colleges. Sometimes student groups co-sponsor events with groups at other colleges. Wake Forest students and groups must adhere to University policies and rules on such occasions. Where officials of another college or university notify Wake Forest of incidents giving rise to a claim of a Wake Forest honor code or social rule violation, the case shall be processed through the Wake Forest system.

Because of the proximity and the nature of the local relationships with Salem College and Winston-Salem State University, all three institutions have established mutual arrangements, which acknowledge and respect the integrity of each judicial system and students' rights and responsibilities at each college. Hence, when Wake Forest officials notify Salem College or Winston-Salem State University of potential violations on the Wake Forest campus or at events sponsored by Wake Forest groups, the case shall be processed through the students' home college system.

- **Period of Limitation.** A student may file a complaint of sexual misconduct at any time while both they and the alleged assailant are enrolled as students at Wake Forest, regardless of the length of time between the alleged misconduct and the decision to file the complaint.
- **Confidentiality.** The University will take all precautions feasible to preserve the confidentiality of both the complainant and the accused. However, students should understand that under conditions of imminent harm to the community, the University is required by federal law to inform the community of the occurrence for the protection of all members of the community. In addition, the University cannot control confidentiality violations by other students who may be involved as witnesses in the judicial hearing.
- **Sanctions.** Sanctions for a finding of responsibility depend on the nature and the gravity of the misconduct. They may include, but are not limited to: expulsion, suspension, disciplinary probation, specialized treatment off-campus, and/or other educational sanctions as deemed appropriate by the hearing panel.

2) **Civil Suits.** Victims may also consider pursuing a civil suit for money damages against the perpetrator of a sex crime, and against any other negligent or tortious parties. A victim should contact a civil attorney, who will often work for a contingency fee. Local attorneys may be identified through the North Carolina Bar Association Lawyer Referral Service (1-800-662-7660).

3) **Criminal Prosecution.** Victims also have the right to have charges filed by a prosecutor or district attorney to pursue criminal prosecution and conviction of a perpetrator. The University Police and the Victims Assistance Program are available to assist students in making reports to the police and in pursuing charges. The nature of the case and its proceedings will be a matter of public record and access. Sentencing options for the perpetrator include imprisonment, fines, community service and/or probation.

II. PROTOCOLS FOR VICTIMS AND ACCUSED STUDENTS

Victims

1. Victims should be treated with respect by Wake Forest officials.
2. Victims may have a support person present during any campus judicial hearing (administrative, HEC, or Judicial Council).
3. Victims should not be discouraged from reporting to University officials.
4. Victims should be informed of the outcome and sanction of any disciplinary hearing involving sexual misconduct.
5. Victims should be informed in a timely manner of their options to notify proper law enforcement authorities including on-campus and local police, and of the option to be assisted by campus authorities in such notification, if the student so chooses.

6. Victims should be notified of available counseling, mental health or student services for victims of sexual misconduct, both on campus and in the community.
7. Victims should be notified of and made aware of options for, and provided assistance in changing academic and living situations after an alleged sexual assault, if so requested by the victim and if such changes are reasonably available.
8. The irrelevant prior sexual history of a victim should not be admitted in a campus hearing.
9. Campus officials should not mediate incidents of sexual misconduct, unless the student (victim) so chooses.
10. Victims should be permitted to make a victim-impact statement to the hearing officer or body and to have that statement considered by the hearing officer or body in determining its sanction.
11. Victims should be able to seek and receive a campus restraining order against another student who has engaged in or threatens to engage in stalking, threatening, harassing, or other improper behavior that presents a danger to the welfare of the complaining student.
12. University Police should respond quickly and with sensitivity to complaints of sexual misconduct.
13. Victims have the right to submit a written statement to the Judicial Council in cases of appeal.

Accused Students

1. The accused in a sexual misconduct case may have a student advisor to accompany and assist him or her in the campus hearing process
2. The accused may refuse to answer some or all questions with the understanding that that silence should not be used against him or her.
3. The accused may question, through his/her student advisor (BIA), witnesses at a hearing
4. The accused should be notified as to the outcome and sanction of the hearing.
5. The accused may appeal the outcome of his or her case under certain circumstances outlined in the constitution of the Judicial Council.
6. The accused should have access to campus resources for medical, counseling, and other advisory services.
7. The irrelevant prior sexual history of the accused should not be admitted in a campus hearing.

III. GROUP INFRACTIONS

Although not all acts of individual group members can or should be attributable to the groups, any group or collection of its members acting in concert should be held responsible for its actions. Occasional lapses of individual members or isolated individual failures in restraint should not be chargeable to the group, but evidence of group conduct exists where:

- ◆ Members of the group act in concert to violate University standards of conduct.
- ◆ A violation arises out of a group-sponsored, financed or endorsed event.
- ◆ A group leader(s) has knowledge of the incident before it occurs and fails to take corrective action.
- ◆ The incident occurs on the premises owned or operated by the group.
- ◆ A pattern of individual violations is found to have existed without proper and appropriate group control, remedy, or sanction.
- ◆ Members of a group act in concert, or the organization provides the impetus (probable cause) for violation of University rules and regulations.

In determining whether a group may be held collectively responsible for the individual actions of its members, all the factors and circumstances surrounding the specific incident will be reviewed and evaluated. As a guiding principle, groups will be held responsible for the acts of their members when those acts grow out of, or are in any way related to, group life.

Every organization has the duty to take all reasonable steps to prevent any infraction of University rules and state laws growing out of or related to the activities of the organization. This duty is applicable not only to members of the organization who are engaging in the activity, but is applicable to every member, including those not engaging in the activity.

Thus, if a number of members are involved in misbehavior growing out of their association or membership in the group, even if no other members are around to prevent the action, the organization will still be held collectively liable for the misbehavior so long as it grows out of the life of the organization. All members should be aware that their misdeeds may result in the sanctioning of their entire organization and also of themselves as individuals.

IV. POLICY REVIEW

Wake Forest University's Policy on Sexual Assault was first developed in 1987 and has been continuously revised by the Vice-President for Student Life in consultation with the Executive Board of PREPARE (Policy Group on Rape Education, Prevention and Response).

Guidelines for dissemination:

- ◆ PREPARE student facilitators will introduce incoming students to the sexual misconduct policy during a required sexual misconduct prevention program. A sexual misconduct brochure outlining the policy and guidelines will be distributed to each incoming student at these programs.

V. IMPORTANT CONTACTS

Student Health Service	336.758.5218
University Police	336.758.5911
CARE (Center for Awareness, Response And Education)	336.758.4963
University Counseling Center	336.758.5273 (For emergencies after hours, call Student Health Service)
Victim's Services	336.758.4332 or 336.758.5591
PREPARE Student Advocates	336.671.7075 (available 24-hours during Fall and Spring semesters when school is in session)
Judicial Officer	336.758.5226
Residence Life and Housing	336.758.5185
University Chaplain	336.758.5017
Sexual Assault Response Program (off-campus)	336.722-4457 (24-hours)
Forsyth Medical Center Emergency Dept.	336.718-2001
WFU Baptist Medical Center Emergency Dept.	336.713-9000
Winston-Salem Police	911
Forsyth County Sheriff's Department	911