

**CHOWAN UNIVERSITY 2024-25**

**SEX DISCRIMINATION, SEX-BASED HARASSMENT, AND RETALIATION POLICY**

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## CHOWAN UNIVERSITY 2024-25

### SEX DISCRIMINATION, SEX-BASED HARASSMENT, AND RETALIATION POLICY

#### 1. Overview/Purpose

Chowan University is committed to providing a workplace and educational environment that is free from sexual harassment, and sexual misconduct. The University affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All faculty and staff and applicants for those positions, students<sup>1</sup> and applicants for enrollment, and visitors to the University shall be treated with respect, courtesy and dignity.

These goals will be manifested by providing equitable rights, privileges, opportunities, treatment, resources, services, participation, access and benefits to all persons through the development, formulation and implementation of University programs, policies, procedures, practices and contractual and other commitments. These provide for prompt, fair, and impartial resolution of allegations of sex discrimination, sex-based harassment, or retaliation.

#### 2. Notice of Nondiscrimination

Chowan University (hereinafter “Chowan” or “University”) seeks to comply with all federal, state, and local laws, regulations and ordinances prohibiting sex discrimination or harassment in public post-secondary institutions.

The University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of actual or perceived sex. The University expressly prohibits discrimination and harassment on the basis of sex, sexual orientation, gender, gender identity, gender expression. Chowan University prohibits sexual harassment, sexual violence, intimate partner violence, sexual exploitation and stalking regardless of the gender, gender identity, gender expression, or sexual orientation of the individuals involved.

Chowan University also prohibits retaliation against any person participating in good faith in any discrimination investigation or complaint process internal or external to the institution; for bringing a complaint of discrimination or harassment or for assisting someone with such a complaint.

Chowan’s policies and procedures related to sexual discrimination, harassment and retaliation are designed to promote principles of human dignity with an emphasis on meaningful remedies, social justice, victim empowerment and advocacy, comprehensive investigation and prompt,

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<sup>1</sup> For the purpose of this policy, the Chowan University defines “student” as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the Chowan University.

humane, non-adversarial resolution of everything from bias incidents to stalking, to rape and intimate partner violence.

This Policy applies to all faculty, staff and students in both employment and access to educational opportunities. Therefore, any member of the Chowan community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, living environment and/or social access, benefits, and/or opportunities of any member of the Chowan community, guest or visitor on the basis of that person's actual or perceived sex, is in violation of this policy.

The policies presented here are subject to evaluation and investigation in compliance with Title IX Regulations and, where applicable, referral to other appropriate Chowan Policies based on the status of the Respondent.

### **3. Title IX Reporting**

The University has appointed a Title IX Coordinator to oversee the University's compliance with federal, state, and local sex discrimination laws and ordinances. Inquiries about this policy and procedure may be made internally to:

John Dilustro  
Title IX Coordinator/ Associate Provost  
Chowan University  
One University Place  
Murfreesboro, NC 27855  
office: 252.398.6528  
[dilusj@chowan.edu](mailto:dilusj@chowan.edu)

#### Inquiries may also be made to the Office of Civil Rights:

Office for Civil Rights (OCR) U.S. Department of Education  
400 Maryland Avenue, SW Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>  
Web: <https://www.notalone.gov/>

#### **4. Mandated Reporting and Confidential Employees**

Chowan is committed to the highest ethical and professional standards of conduct and to the safety and well-being of all members of our community. All Chowan faculty and employees (including student employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected sex discrimination, sex-based harassment, retaliation, and/or other Prohibited conduct to appropriate officials immediately. This includes reports from students, third-parties, and/or anonymous sources. Supportive measures may be offered as the result of such disclosures without formal University action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sex discrimination, sex-based harassment, or retaliation of which they become aware is a violation of University Policy and can be subject to disciplinary action for failure to comply/failure to report.

##### ***Confidential Employees***

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with off-campus counselors, campus clinic providers, off-campus local rape crisis counselors, domestic violence resources and local or state assistance agencies, who will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Off-campus counselors are available for students free of charge and the University has a 24-hour campus crisis team to respond to emergencies. These employees will submit anonymous statistical information for Title IX tracking and Clery Act purposes unless they believe it would be harmful to their client, patient.

#### **5. Scope**

This Policy is only applicable to alleged incidents that occur on or after August 1, 2024. For alleged incidents of sex discrimination or sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. A link to applicable versions of those policies and procedures are available on the Title IX website.

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in Chowan's program or activities, including education and employment.

This Policy prohibits all forms of sex discrimination, and may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

#### **6. Jurisdiction**

This policy applies to sexual harassment and misconduct in the employment and education program and activities of Chowan University; to conduct that takes place on the campus or on property owned or controlled by Chowan University; at Chowan sponsored events, or in buildings owned or controlled by Chowan University's recognized student organizations; and in circumstances in which Chowan exercises substantial control over both the Respondent and the context in which the conduct occurred. The Respondent (person accused) must be a member of Chowan's community in order for its policies to apply.

Regardless of where the conduct occurred, Chowan will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. Chowan will address off-campus conduct when such conduct represents a substantial University interest or substantially impacts a member of the Chowan community.

A substantial Chowan interest is defined to include:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality of Murfreesboro, North Carolina where Chowan is located;
- b. Any situation in which it is determined that the Respondent may present an imminent and serious threat to the health or safety of any student, employee, or other individual;
- c. Any situation that significantly impinges upon the rights, property or achievements of others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests of Chowan.

Off-campus discriminatory or harassing speech by employees may be regulated by Chowan only when such speech is made in an employee's official or work-related capacity.

Reports of sexual harassment, sexual misconduct or retaliation should be made promptly. There is no time limitation on the filing of grievances as long as the accused individual remains subject to Chowan's jurisdiction. All reports are acted upon promptly while every effort is made by Chowan to preserve the privacy of reports.

When a party is participating in a dual enrollment or early college program, Chowan will coordinate the party's home institution to determine jurisdiction and coordinate providing supportive measures and responding to the complaint under the appropriate policy and procedures based on the allegations and identities of the parties.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sex discrimination or sex-based harassment in an externship, study abroad program, or other environment external to Chowan where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment.

John Dilustro serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating Chowan University efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation prohibited under this policy.

## **7. Supportive Measures**

Chowan will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged sex discrimination, sex-based harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to Chowan's education program or activity, including measures designed to protect the safety of all Parties and/or the Chowan's educational environment and/or to deter sex discrimination, sex-based harassment, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, the University will inform the Complainant, in writing, that they may file a Complaint with the University either at that time or in the future. The Title IX Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The University will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the University's ability to provide those supportive measures. Chowan will act to ensure as minimal an academic/occupational impact on the Parties as possible. The University will implement measures in a way that does not unreasonably burden any party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Student financial aid counseling
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees

- Implementing contact restrictions (no contact orders) between the Parties
- Class schedule modifications, withdrawals, or leaves of absence
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Campus ban
- Timely warnings
- Increased security and monitoring
- Providing campus safety escorts
- Safety planning
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

#### ***Modification of Supportive Measures***

The Parties are provided with a timely opportunity to seek modification or reversal of the University's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the Title IX regulatory definition of supportive measures. The University will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change. The University typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

#### **8. Online Harassment and Misconduct**

University policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities, or when they involve the use of University networks, technology, or equipment.

Although Chowan may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported, it will engage in a variety of means to address and mitigate the effects.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related

capacity.

## **9. Prohibited Conduct**

### **A. Sex Discrimination**

### **B. Sex-based Harassment**

### **C. Sexual Misconduct**

### **D. Other Prohibited Conduct**

Students and employees are entitled to an educational and employment environment that is free of sex discrimination, sex-based harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited sex discrimination, sex-based harassment, and retaliation that are also prohibited under University Policy. When speech or conduct is protected by academic freedom, it will not be considered a violation of University Policy, though supportive measures will be offered to those impacted.

### **All offense definitions below encompass actual and/or attempted offenses.**

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

#### **A. Sex Discrimination**

Sex discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived sex.

Discrimination can take two primary forms:

##### **1) Disparate Treatment Discrimination:**

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:
  - Excludes a person from participation in;
  - Denies a person benefits of; or



- Otherwise adversely affects a term or condition of a person’s participation in a program or activity.

**2) Disparate Impact Discrimination:**

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on the basis of sex that:
  - Excludes a person from participation in;
  - Denies a person benefits of; or
  - Otherwise adversely affects a term or condition of a person’s participation in a University program or activity.

**B. Sex-based Harassment (Applicable under Title IX, Title VII, and the FHA)**

Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex,<sup>2</sup> including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

**1) Quid Pro Quo:**

- an employee agent, or other person authorized by the University,
- to provide an aid, benefit, or service under the University’s education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- on a person’s participation in unwelcome sexual conduct.

**2) Hostile Environment Harassment:**

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person’s ability to participate in or benefit from the University’s education program or activity

The University reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not prohibited by law. Addressing such conduct will not result in the imposition of discipline under University Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

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<sup>2</sup> Throughout this Policy, “on the basis of sex” means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Title Coordinator.

**3) Sexual Assault:**<sup>3</sup>

a. **Rape:**

- Penetration, no matter how slight,
- of the vagina or anus,
- with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

b. **Fondling:**

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

c. **Incest:**

- Sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by North Carolina law.

d. **Statutory Rape:**

- Sexual intercourse,
- with a person who is under the statutory age of consent of 16 years of age.

**4) Dating Violence, defined as:**

- violence,
- on the basis of sex,
- committed by a person,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length

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<sup>3</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

- a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- b) Dating violence does not include acts covered under the definition of domestic violence.

3) **Domestic Violence**,<sup>4</sup> defined as:

- violence,
- on the basis of sex,
- committed by a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North Carolina, or
- by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.

**Stalking**, defined as:

- engaging in a course of conduct,
- on the basis of sex,
- directed at the Complainant, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

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<sup>4</sup> To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

### C. Sexual Misconduct

#### ***Sexual Exploitation:***

- a person taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above,
- for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy
- Knowingly making an unwelcome disclosure of (or threatening to disclose) a person's sexual orientation, gender identity, or gender expression
  - Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)

- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)

#### **D. Other Prohibited Conduct**

##### **1) Bullying:<sup>5</sup>**

- repeated and/or severe aggressive behavior
- that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant

##### **2) Endangerment:**

- threatening or causing physical harm;
- extreme verbal, emotional, or psychological abuse; or
- other conduct which threatens or endangers the health or safety of any person or damages their property.

##### **3) Hazing:**

- any act or action
- which does or is likely to endanger the mental or physical health or safety of any person
- as it relates to a person's initiation, admission into, or affiliation with any University group or organization.

For the purposes of this definition:

- It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or student organization, for an allegation of hazing to be upheld.
- It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily

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<sup>5</sup> For Bullying, Hazing, and Endangerment, these offenses can be applied when the conduct is on the basis of sex but is not a form of Sex-based Harassment.

assumed the risks or hardship of the activity, or that no injury was suffered or sustained.

- The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered hazing.
- Hazing is not confined to the student group or student organization with which the person subjected to the hazing is associated.

**4) Retaliation:**

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by the University, a student, employee, or a person authorized by the University to provide aid, benefit, or service under the University's education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under Procedures, including an Informal Resolution process, or in any other appropriate steps taken by the University to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.
- The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the University to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

**5) Unauthorized Disclosure:**

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the University; or
- publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

**6) Failure to Comply/Process Interference**

- Intentional failure to comply with the reasonable directives of the Title IX Coordinator in the performance of their official duties, including with the terms of a no contact order

- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an Informal Resolution agreement
- Intentional failure to comply with mandated reporting duties as defined in this Policy
- Intentional interference with the Resolution Process, including, but not limited to:
  - Destruction of or concealing of evidence
  - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
  - Intimidating or bribing a witness or party

## **10. Sanctioning<sup>6</sup>**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the appropriate process(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external authorities.

## **11. Consent, Force and Incapacitation**

As used in this Policy, the following definitions and understandings apply:

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<sup>6</sup> The full list of student sanctions and employee sanctions are in Appendix A

## A. Consent

Consent is defined as:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to be kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on the University to determine whether its



Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.<sup>7</sup>

### **B. Force**

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

### **C. Incapacitation**

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person’s

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<sup>7</sup> Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual.

state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

## **12. Standard of Proof**

The University uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that the University will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

## **13. Reports/Complaints**

A Report provides notice to the University of an allegation or concern about sex discrimination, sex-based harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. A Complaint provides notice to the University that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of sex discrimination, sex-based harassment, and/or retaliation may be made using any of the following options:

- 1) File a Complaint with, or give verbal Notice directly to, the Title IX Coordinator or any designated Deputy Coordinator. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator.
- 2) Submit online Notice through the Title IX Discrimination Complaint Form <https://www.chowan.edu/campuslife/public-safety/title-ix>. Anonymous reports are accepted but can give rise to a need to investigate. The University tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the University respects Complainant request to dismiss complaints unless there is a compelling threat to health and/or safety, the complainant is largely in control and should not fear a loss of privacy by making a report that allows the Chowan University to discuss and/or provide supportive measures.

Reporting carries no obligation to initiate a Complaint, and in most situations, the University is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a

compelling threat to health and/or safety, where the University may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, the University will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows the University to discuss and/or provide supportive measures, in most circumstances.

***Advisor of Choice:*** The complainant and respondent are permitted and encouraged to have an Advisor of Choice accompany them throughout the process. In cases involving sexual harassment, sexual assault, dating or domestic violence or stalking, by law, the advisor of choice may be anyone the party chooses to serve in this capacity. Chowan University will provide an advisor if the individual does not have one identified.

#### **14. Time Limits on Reporting**

There is no time limitation on providing Notice/Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Title IX Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

#### **15. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate University policies.

#### **16. Confidentiality/Privacy**

Chowan makes every effort to preserve the Parties' privacy. The University will not share the identity of any individual who has made a Complaint of sex discrimination, sex-based harassment, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination, sex-based harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing

regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.<sup>8,9</sup>

### **Unauthorized Disclosure of Information**

Parties and Advisors are prohibited from disclosing information obtained by the University through the Resolution Process, to the extent that information is the work product of the University (meaning it has been produced, compiled, or written by the University for purposes of its investigation and resolution of a Complaint), without authorization. It is also a violation of Chowan's Policy to publicly disclose institutional work product that contains a party or witness's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

### **17. Emergency Removal/Interim Action/Leaves**

The University can act to remove a student Respondent accused of sex discrimination, sex-based harassment, or retaliation from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator and may be done in conjunction with the Behavior Intervention Team using its standard objective violence risk assessment procedures. Employees are subject to existing procedures for interim actions and leaves.

### **18. Federal Timely Warning Obligations**

Chowan must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the University community.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **19. Amnesty**

The Chowan community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to University officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Chowan community that Complainants choose to give Notice of

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<sup>8</sup> 20 U.S.C. 1232g

<sup>9</sup> 34 C.F.R. § 99

misconduct to University officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, the University offers Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the University and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

**Students:** The University also maintains an amnesty policy for students in addition to witnesses who offer help to others in need. The University may provide purely educational options with no official disciplinary finding, rather than punitive sanctions.

**Employees:** Sometimes, employees are hesitant to report sex discrimination, sex-based harassment, or retaliation they have experienced for fear of getting in trouble themselves. The University may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

## **20. Federal Statistical Reporting Obligations**

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- 3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking<sup>10</sup>
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with the Clery Coordinator for publication in the Annual Security Report and daily campus crime log.

## **21. Independence and Conflicts of Interest**

The Title IX Coordinator manages the Title IX Policy and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under

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<sup>10</sup> 42 U.S.C. Sections 13701 through 14040.

this Policy and these procedures.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the President. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by an Investigator or Hearing Officer or any other individual involved with the Title IX process should be raised with the Title IX Coordinator.

## **21. Revision of this Policy**

This Policy succeeds previous policies addressing sex discrimination, sex-based harassment, sexual misconduct, and/or retaliation, though previous policies and procedures remain in force for sexual harassment incidents occurring before August 1, 2024. The Title IX Coordinator reviews and updates these policies and procedures regularly. Chowan University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

This Policy is effective 8/1/2024