

**UNIVERSITY OF NEW ENGLAND**  
**SEXUAL MISCONDUCT POLICY**  
**2011-2012 Academic Year**

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The University of New England will not tolerate and prohibits all forms of sexual misconduct including rape, acquaintance rape and sexual assault in any form. These acts are against Maine State Law and a violation of the University Conduct Code. If there is reason to believe that the University of New England policies prohibiting sexual misconduct of any kind have been violated, the administration will pursue disciplinary action through the appropriate University procedure.

**A. DEFINITIONS**

**Sexual Misconduct offenses include, but are not limited to:**

1. Non-Consensual Sexual Intercourse (or attempts to commit same)
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Sexual Exploitation
4. Sexual Harassment
5. Sexual Coercion

**Non-Consensual Sexual Intercourse:**

Non-Consensual Sexual Intercourse is

- any sexual intercourse (anal, oral, or vaginal),
- however slight,
- by a man or woman upon a man or a woman,
- without effective consent.

**Non-Consensual Sexual Contact:**

Non-Consensual Sexual Contact is

- any intentional sexual touching (including disrobing or exposure), however slight,
- by a man or a woman upon a man or a woman,
- without effective consent.

**Sexual Exploitation:**

Sexual exploitation happens

- when a student takes non-consensual, unjust or abusive sexual advantage of another for his/her own advantage or benefit;
- to benefit or advantage anyone other than the one being exploited;
- that behavior does not otherwise constitute one of the other three sexual misconduct offenses.

Examples of sexual exploitation include, but are not limited to, prostituting another student, nonconsensual video or recording of sexual activity, going beyond the boundaries of consent

(such as letting your friends surreptitiously watch you having consensual sex), engaging in peeping, and knowingly transmitting an STD or HIV to another student.

### **Sexual Harassment:**

- See Discrimination and Harassment Policy for definitions of sexual harassment that fulfill the requirements of Title VII and Title IX. This type of complaint is handled under the University of New England Discrimination and Harassment Policy.

### **Sexual Coercion**

- The use of force or intimidation to obtain compliance

### **Definition of Terms:**

#### **Intercourse**

Intercourse is not synonymous with penetration. If it were, non-consensual French kissing could meet the definition of oral rape. Intercourse is more limited and 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**

Sexual touching is any contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making a student touch another, or themselves, with or on any of these body parts.

#### **Consent**

Consent is informed, freely and actively given, mutually understandable words or actions which indicate a willingness to participate in mutually agreed upon sexual activity. There is no consent if it results from the use of physical force, threats, intimidation, coercion, or the person giving consent is incapacitated. Consent, once freely and actively given, may be withdrawn at any time.

#### **Incapacitated Sex**

Being under the influence of alcohol and/or drug(s) is never an excuse for violation of this policy. To have sex with someone who is known to be, or should be known to be incapable of making a rational, reasonable decision about a sexual situation is a violation of policy. This includes someone whose incapacity results from the use of alcohol and/or other drug(s) or the taking of a so-called "daterape drug." Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student for the purpose of inducing incapacity is an offense of the most serious nature.

### **SANCTION STATEMENT**

- Any student found responsible of Non-Consensual Sexual Intercourse will face a

recommended sanction of suspension or expulsion.\*

- Any student found responsible of Non-Consensual Sexual Contact (where no intercourse has occurred) will receive a sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary infractions.\*
- Any student found responsible of sexual exploitation or sexual harassment will receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary infractions.\*
- The University will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators.

\*The judicial body reserves the right to broaden or lessen any range of sanctions or recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the judicial body nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

## **B. General Guidelines**

1. The University will, upon request, provide information to its students regarding the following:
  - a. The University of New England Sexual Misconduct Policy.
  - b. Data on the prevalence of these crimes and their frequency on campus and surrounding communities. See the annual "Crime Awareness and Campus Security Act of 1990" report, also known as the Jeanne Cleary Act, available on the Safety and Security website).
  - c. Information about the circumstances in which campus rapes have occurred.
  - d. The range of administrative, civil and criminal penalties that can be invoked against assailants.
2. The University will institute campus-wide educational programs on sexual misconduct in order to educate all members of the University community.
3. Because a college or university is a community where sexual misconduct can be a particular concern, the University has established response protocols for staff that assist victims of sexual misconduct. Resources include but are not limited to:
  - a. Written protocols describing exactly how University staff should respond;
  - b. Access to immediate medical treatment;
  - c. Access to immediate counseling support at no additional cost;
  - d. The services of campus-sponsored advocates who are located in the Office of the VP/SA, Security Office, the Office of Human Resources, and the Counseling Services.
  - e. Information for victims about sexual misconduct and available options for dealing with an assault including reporting as a crime, invoking the University Conduct Code and/or pursuing a sexual harassment claim through the VP/SA or Human Resources Office.
  - f. Training for University personnel who might interact with sexual misconduct victims.
  - g. Coordination with campus and municipal police officials in responding to assaults.
  - h. Informational residence hall programs.
  - i. Activities and informational materials that develop a sense of mutual responsibility among University students, encouraging them to watch out for one another at parties and other social events.

4. The University has adopted procedures that will encourage victims to report sexual misconduct to University staff and facilitate the gathering of information about these violations.
5. Mediation will not be used to resolve complaints of sexual misconduct.
6. Decisions regarding the outcome of a judicial review of a charge of sexual misconduct shall be made on the basis of whether or not there is a preponderance of the evidence to support the finding of a violation, indicating that it is more likely than not that the student committed the violation

### **C. Maine State Law and the University Conduct Code**

Maine State Law considers rape, gross sexual assault and unlawful sexual contact to be serious crimes that are punishable by imprisonment, probation, a criminal record, and a monetary fine. The maximum term of imprisonment for gross sexual assault (including rape and acquaintance rape) is a definite period of imprisonment not to exceed 30 years.

The University Conduct Code specifically prohibits sexual misconduct. This type of unlawful conduct (rape or other sexual assault) may result in reports to law enforcement officials and/or serious sanctions under the Conduct Code, including suspension or dismissal from the University.

### **D. Incidence and Prevalence of Sexual Misconduct**

National statistics indicate that reported sexual assaults represent only some of the number that actually occur. Victimization surveys estimate that actual occurrences may be several times that number. The incidence of sexual misconduct by/between acquaintances far exceeds that of stranger rape and is more common among persons 18-23 of age.

### **E. Vulnerability of College and University Students**

College and university students may be more vulnerable to sexual misconduct than many other groups. Nationally, the majority of reported victims and offenders are of college and university age, with the rate of victimization highest among the 16 to 19 year olds. Women between 20 and 24 years of age experience the second highest victimization rate. The offender population shows a similar age distribution.

### **F. Protective Behaviors**

- 1) Accept your partner's decision—"no" means "no". Don't assume that there are other meanings. Don't continue after your partner says "no"
- 2) If your partner is under the influence of alcohol or other drugs, he or she is not "legally capable of providing consent."
- 3) Trust your intuition. If you feel you are being pressured into unwanted sexual relations, don't hesitate to express your unwillingness, even if it might appear rude.
- 4) Don't accept a drink from a stranger or leave your drink unattended.
- 5) Avoid illegal drugs or excessive use of alcohol. Alcohol and drugs interfere with clear thinking and effective communication. An extremely high percentage of sexual misconduct involves the excessive use of alcohol or drugs, often by both the victim and the offender.

These are only suggested behaviors individuals can engage in to try to avoid situations which might lead to sexual misconduct. If an individual doesn't choose to practice these behaviors, or is

unable to for whatever reason, it does NOT justify an act of sexual misconduct.

### **G. Resources for Help in Responding to Sexual Misconduct**

If you or a friend experience sexual misconduct, on or off campus, are confused and need clarification, have questions or need help, contact:

#### University of New England Title IX Coordinator

*Human Resources Offices both Campuses (BC) (207) 602-2339 or (PC) (207) 221-4256*  
[roesler@une.edu](mailto:roesler@une.edu)

The Coordinator or his or her designee is trained and authorized to investigate all reports of Sexual Harassment or Misconduct and address as appropriate.

#### Police Department (911) or Department of Safety and Security (ext. 366)

Any victim of sexual misconduct should contact the Police Department or Department of Safety and Security for assistance in obtaining medical attention and to initiate investigation of the crime. Those Departments can summon medical resources and criminal investigators, act as a liaison with local law enforcement, County Attorney, and Victim/Witness Advocate, and provide referral and advice regarding university and community resources. The University will make reasonable efforts to protect and secure the victim's rights and the victim will have input into the course of the investigation.

#### Hospital Emergency Department

*Southern Maine Medical Center at (207) 283-7100 or Maine Medical Center at (207) 662-2381*

These health care units can provide immediate medical care, STD (sexually transmitted disease) testing and pregnancy testing and prevention. The successful prosecution of sexual assault/rape cases often depends on physical evidence collected soon after the assault. Each hospital has health care providers trained to treat sexual assault/rape victims with attention to collecting physical evidence. To assure the best chance of successful prosecution, the victim should be advised not to wash or change clothes prior to seeking immediate medical treatment.

#### University Health Care

*(207) 602-2358 (BC ) or (207) 221-4242(PC)*

During routine Health Center hours, staff can provide immediate emergency and ongoing medical care, STD (sexually transmitted disease) testing, and pregnancy testing and prevention. With the victim's consent, they will make arrangements with local hospitals, municipal Police Departments and Campus Security for transportation and medical protocol used to provide evidence for prosecution. They will also provide referral and advice regarding campus and community resources.

#### Residential Education and Housing Staff (Resident Advisor or Professional Staff)

*Individual R.A. extension or (207) 602-2272 (BC) for Housing or (207) 221-4267 (PC) for Housing.*

They can provide immediate support and response, make arrangements as necessary for emergency services, provide advice regarding university and community resources, and provide intervention to assure safety.

#### Counseling Services

*(207) 602-2549 (BC )or (207) 221-4233 (PC)*

Counseling Services provides individual counseling or referrals to victims or perpetrators who are University students.

#### The Vice President for Student Affairs (VPSA), Dean of Students, and/or Assistant Dean(s) of Students

*(207) 602-2372 (BC) or (207) 221-4212 (PC)*

The VPSA as well as the Assistant Dean of Students can provide information, advice, referrals, and informal intervention to sexual misconduct victims. Alternative responses will be shared with the victim who may not want to press criminal charges or pursue formal judicial action against the perpetrator. The VPSA monitors University response to sexual misconduct and provides adjudication of violations of the University Conduct Code either through formal administrative action or a Judicial Review Committee.

#### Pastoral Support

The Student Affairs Office (207) 602-2372 (BC) or (207) 221-4212 (PC) serves as a resource to help with referrals to campus/community resources.

#### Planned Parenthood of Maine

*(207) 282-6620 or 1-800-230-7526*

Can provide information about emergency contraception and information about sexually transmitted diseases.

#### Sexual Assault Response Services of Southern Maine

***24 Hours: 1-800-313-9900 or 774-3613***

Provides confidential hotline counseling and referral for victims of sexual misconduct. They may accompany you to a medical facility and stay with you during an examination if you wish.

#### Court-Affiliated Resources

York County Victims/Witness Coordinator, (207) 324-8001

Victim Advocate, Cumberland County, (207) 871-8384

Victim Advocate, Biddeford District Court, (207) 282-3006

Provides information and support for victims of sexual misconduct as the case is prosecuted through the court system.

#### Additional Resources

There are additional resources to the ones noted above. In the event that a student experiences sexual misconduct they should treat it seriously and tell someone. There are long-term effects, even if the immediate effects may not appear obvious. Help is important. Which service one starts with is not important. Each service is designed to address the specific concerns of a situation. These resources are not isolated, but cooperate to provide a web of support for the student who has experienced sexual misconduct. After the first contact, there is help for deciding who else might be of assistance.

#### **H. Importance of Reporting Sexual Misconduct and Other Sexual Assaults**

Students who have experienced sexual misconduct in any way have been victimized. The assailants are at fault and their behavior is not acceptable. In order to stop this type of activity, we encourage students to report what has happened to them. This reporting will ensure help for the victim and will permit the University to proceed against the perpetrator. Mindful of the different needs of victims, there is a range of ways to report the accused student's behavior. A complainant may pursue any or all of these options:

- 1) If the victim desires criminal prosecution through the courts, the matter should be reported to the police. The County Prosecutor's Office provides a victim/witness advocate whose role is to help and inform victims of sexual violence while moving through the prosecution process. The University's Department of Safety and Security can be helpful in exploring this option.
- 2) If the offender is a University of New England student, and the victim does not want to take action through the courts, but wants the University to take formal action against the offender, the matter should be reported to the VPSA. To ensure equitable and thorough review with sensitivity and respect for the rights of the victim, as well as the accused, the following conditions will prevail at all reviews before the VPSA (or designee) and at all University disciplinary reviews:
  - a) The victim and the accused are each parties to the proceedings and have the right to remain present during the entire disciplinary review, except for deliberations.
  - b) The victim has the ability to give information in a judicial review by means other than being in the same room with the accused student.
  - c) The victim and the accused each have the right to be accompanied by an Advisor from the campus community (not an attorney or parent(s)/guardian(s)) at the review.
  - d) The victim and the accused each have the right to make written statements that shall remain a part of the official record.
  - e) The victim has the right to be informed, concurrent with notice to the accused, of the decision that results from the review, and to be informed of any sanction(s) imposed.

If residing in University residency, the victim has the right to request that he/she be temporarily relocated, when the victim and the accused live in the same residence hall or when the accused lives in close proximity to the victim.

#### **Statement of the Rights of the Complainant**

A complainant has the right:

- 1) To immediate investigation of all complaints of sexual misconduct made in good faith to University administrators.
- 2) To be treated with respect by University officials;
- 3) Of both accuser and accused to have the same opportunity to have others present (in support or advisory roles) during a campus disciplinary hearing;
- 4) Not to be discouraged by University officials from reporting sexual misconduct to both on-campus and off-campus authorities;
- 5) To be informed of the outcome and sanction of any judicial review involving sexual misconduct at the end of the judicial review;
- 6) To be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire;
- 7) To be notified of available counseling, mental health or student services for victims of sexual assault, both on campus and in the community;
- 8) To notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the victim and if such changes are reasonably available (no formal complaint, or investigation, campus or criminal, need occur before this option is available).
  - a) Accommodations may include:
  - b) Change of an on-campus student's housing to a different on-campus location;
  - c) Assistance from University support staff in completing the relocation;
  - d) Arranging to dissolve a housing contract and pro-rating a refund;
  - e) Exam (paper, assignment) rescheduling;
  - f) Taking an incomplete in a class;
  - g) Transferring class sections;
  - h) Temporary withdrawal;
  - i) Alternative course completion options.
- 9) Not to have irrelevant prior sexual history admitted as evidence in a judicial review;
- 10) Not to have any complaint of sexual misconduct mediated (as opposed to adjudicated);
- 11) To make a victim-impact statement at the campus judicial review and to have that statement considered by the judicial body in determining its sanction;
- 12) To campus restrictions 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 or others;
- 13) To have complaints of sexual misconduct responded to quickly and with sensitivity by campus security officials.
- 14) To appeal the finding and sanction of the judicial body, in accordance with the standards for appeal established by the University;
- 15) To review all documentary information available regarding the complaint, subject to the confidentiality limitations imposed by state and federal law;
- 16) To be informed of the names of all persons providing information who will be called at the disciplinary hearing.
- 17) To preservation of confidentiality, to the extent possible and allowed by law;
- 18) To a judicial review closed to the public.

- 19) To petition that any member of the judicial body be removed on the basis of demonstrated bias;
- 20) To have an advisor to accompany and assist in the judicial review process. This advisor must be faculty/staff from the University community and cannot be an attorney or family/parent(s)/guardian. The advisor may not take part by directly speaking in the review itself, though they may communicate with the student as necessary;
- 21) To give information in a judicial review by means other than being in the same room with the accused student.
- 22) To submit relevant persons providing information to the judicial body which may, at its/his/her discretion, limit the number heard;
- 23) To be informed of campus judicial rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;
- 24) To have the University request the presence of student, faculty and staff providing information, and the right to indirectly ask questions, of persons providing information (including the accused), and the right to challenge documentary information.
- 25) To be present for all information given and information presented before the judicial body;
- 26) To be informed in advance of any public release of information regarding the complaint;

### **Statement of the Rights of the Accused Student**

The accused student has the right:

- 1) To investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to university administrators against the accused student;
- 2) To be treated with respect by University officials;
- 3) Of both accuser and accused to have the same opportunity to have others present (in support or advisory roles) during a campus disciplinary hearing;
- 4) To be informed of and have access to campus resources for medical, counseling, and advisory services;
- 5) To be informed of the nature, rules and procedures of the campus judicial process and to timely written notice of all alleged violations within the complaint, including the nature of the violation;
- 6) To a review of the complaint, including timely notice of the hearing date, and adequate time for preparation;
- 7) To have complaints of sexual misconduct responded to quickly and with sensitivity by campus officials;
- 8) Not to have irrelevant prior sexual history admitted as information in a judicial review;
- 9) To make an impact statement at the campus judicial proceeding and to have that statement considered by the judicial body in determining its sanction;
- 10) To appeal the finding and sanction of the judicial body, in accordance with the standards for appeal established by the University;
- 11) To review all documentary evidence available regarding the complaint, subject to the confidentiality limitations imposed by state and federal law;
- 12) To be informed of the names of all persons providing information who will be called to give information, except in cases where a witness's identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged

- victim/complainant, which will always be revealed);
- 13) To preservation of confidentiality, to the extent possible and allowed by law;
  - 14) To a judicial review closed to the public;
  - 15) To petition that any member of the judicial body be removed on the basis of demonstrated bias;
  - 16) To submit relevant persons providing information to the judicial body which may, at its/his/her discretion, limit the number heard;
  - 17) To be present for all information given and information presented before the judicial body;
  - 18) To have the University request the presence of student, faculty and staff, persons providing information, and the right to indirectly ask questions of persons providing information, and the right to challenge documentary information.
  - 19) To have an advisor to accompany and assist in the judicial review process. This advisor must be from the University community and cannot be an attorney or parent/guardian. The advisor may not take part directly in the hearing itself, though they may communicate with the accused student as necessary;
  - 20) To a judicial outcome based solely on information presented during the judicial review using the preponderance of evidence standard.
  - 21) To written notice of the outcome and sanction of the review;
  - 22) To be informed in advance of any public release of information regarding the complaint.