



## **SEXUAL MISCONDUCT POLICY FOR SALEM COLLEGE EMPLOYEES**

### **I. STATEMENT OF COLLEGE EMPLOYEE SEXUAL MISCONDUCT POLICY**

Salem College reaffirms its belief that the quest for knowledge can only flourish in an atmosphere free from sexual misconduct, and is committed to providing a safe learning, living, and working environment for all members of the Salem community. This policy prohibits specific behaviors that violate Title IX of the Education Amendments of 1972 (“Title IX”), and Title VII of the Civil Rights Act of 1964 (“Title VII”), and requires Salem College to fulfill certain obligations under the Violence Against Women Reauthorization Act of 2013 (“VAWA”), and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”).

Salem College does not tolerate sexual misconduct, including but not limited to, sexual assault, sexual harassment, domestic violence, dating violence, and stalking. All forms of sexual misconduct are acts of aggression, are therefore prohibited, and Salem College will take all necessary action to prevent such behavior. It is the responsibility of every member of the Salem community to foster an environment free of sexual misconduct. All members of the Salem community are encouraged to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Salem College will support and assist community members who take such actions.

Salem will take immediate action to eliminate sexual misconduct, prevent its recurrence, and address its effects. Anyone alleged to have violated this policy is subject to a Title IX investigation. This may include a report of crimes to law enforcement officials. Anyone can be a perpetrator or victim of sexual misconduct and, therefore the policy is gender neutral.

Individuals should report suspected sexual misconduct to the Title IX Coordinator, Erin Jones Adams, Associate Vice President for Administration, at (336) 721-2702 or [erin.adams@salem.edu](mailto:erin.adams@salem.edu). The Title IX Office is located on the second level of the Inspector’s House, at the corner of Church Street and Academy Street on the Salem College campus. In the event the Title IX Coordinator is unavailable, individuals may contact the Deputy Title IX Coordinator, Cheryl Hamilton, Payroll and Benefits Manager, at (336) 917-5329 or [cheryl.hamilton@salem.edu](mailto:cheryl.hamilton@salem.edu).

### **II. SCOPE: TO WHOM AND WHEN THIS POLICY APPLIES**

This policy applies to all Salem employees who should use this policy to report sexual misconduct violations by anyone on campus, including faculty, staff, students, and third parties such as

contractors. The process for resolving sexual misconduct is based on the relationship of the respondent to Salem College. Respondents who are college students will find their rights, responsibilities, and grievance procedures in the Sexual Misconduct Policy contained in the Student Handbook. Respondents who are employees of Salem College will find their rights, responsibilities, and grievance procedures in this policy located in the Faculty Guide and Personnel Manual.

### **III. DEFINITIONS<sup>1</sup>**

Complainant is any student, employee, or third party who presents as the victim of any sexual misconduct under this policy, regardless of whether that person makes a report or seeks action under this policy.

Dating violence is any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the victim's statement and with consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under domestic violence.

Domestic violence is any felony or misdemeanor crimes of violence committed: (i) by a current or former spouse or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or (v) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Fondling is touching the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Rape is 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 victim.

Respondent is any student, employee, or third party who has been accused of violating this policy.

Sexual assault is a form of sexual harassment that involves having or attempting to have sexual contact with another person without consent.

Sexual contact is any intentional touching or penetration of another person's clothed or unclothed body, including, but not limited to the mouth, neck, buttocks, anus, genitalia, or breast, by another

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<sup>1</sup> These definitions may differ from North Carolina laws. North Carolina criminal statutes are found starting in Chapter 14 of the North Carolina General Statutes.

person with any part of the body or any object in a sexual manner. Sexual contact also includes causing another person to touch their own body or another person's body in the manner described.

Sexual exploitation is taking sexual advantage of or sexually exploiting another person without their consent, such as the non-consensual videotaping of an individual engaging in sexual activity, the knowing exposure of an individual to a sexually transmitted disease, or the non-consensual observation of an individual engaging in sexual acts.

Sexual harassment is unwelcome advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature or based on sex or gender when:

- submission to the behavior is made an express or implied term or condition of employment or status in a class, program, or activity;
- submission to or rejection of the behavior is a factor in an employment or educational decision (such as hiring, promotion, or grading a course);
- the conduct has the purpose or could be reasonably judged to have the effect of interfering with a person's work or educational performance; and/or
- the conduct has the purpose or could be reasonably judged to have the effect of creating an intimidating, hostile, or offensive working or learning environment.

Examples of conduct that may constitute sexual harassment include, but are not limited to: physical assault because of a person's sex or gender; direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, or grades; severe, persistent, or pervasive unwelcome comments regarding a person's sex or gender; unwanted direct propositions of a sexual nature; a pattern of unwelcome sexually explicit statements, questions, jokes, or anecdotes; unwelcome touching, patting, hugging, or brushing against a person's body; unwanted remarks of a sexual nature about a person's clothing, body, sexual activity, or previous sexual experience.

Sexual intercourse is any penetration, however slight, with any object or body part, performed by a person upon another person. Sexual intercourse includes (a) vaginal penetration by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

Sexual misconduct is sexual harassment, sexual assault, dating violence, domestic violence, stalking, and/or any other form of unwanted sexual behavior.

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress. Examples of stalking include, but are not limited to, repeatedly following another person; repeatedly committing acts that alarm, cause fear, or seriously annoy such other person and that serve no legitimate purpose; and repeatedly communicating by any means with a person in a manner likely to intimidate, frighten, or alarm them.

Statutory rape is non-forcible sexual intercourse with a person who is under the statutory age of consent.

## IV. CONSENT

Sexual misconduct can be prevented if consent is obtained prior to sexual activity. Salem College defines consent to sexual activity as the mutual agreement or willingness to participate in sexual activity. The willingness to engage in sexual activity must be clearly communicated by mutually understandable words or actions. The decision to engage in sexual activity must be freely and actively given by all participants.

- Consent must be clear and unambiguous.
- Consent may not be implied by silence, lack of active resistance, or passivity.
- Consent may not be implied by prior sexual activity between the parties, or by prior sexual activity with other parties.
- Consent for one sexual act does not imply consent for other or different types of sexual acts.
- Consent is not effective consent if it is obtained by force, coercion, intimidation, manipulation, or threats.
- Consent may be withdrawn at any time. If one party communicates withdrawal of consent to the other party, then the sexual activity must cease.
- Someone who is incapacitated cannot consent.

Under North Carolina law, consent may never be given by a person who is:

- Under the age of 16;
- Mentally disabled meaning that the person has a mental disorder that either: (1) prevents the person from being able to evaluate the nature of his or her conduct; (2) prevents the person from being able to resist the sexual act; or (3) prevents the person from being able to communicate unwillingness to engage in the sexual act;
- Unconscious; or
- Physically unable to resist the sexual act or to communicate unwillingness to engage in the sexual act. It is important to note that this inability to resist or communicate unwillingness may result from the use of alcohol or drugs. Therefore, a person may not engage in sexual activity with another individual if the person knows, or reasonably should know, that the other individual is incapacitated by the use of alcohol or drugs. Being intoxicated or under the influence of drugs does not eliminate the requirement for obtaining effective consent to sexual activity.

Any sexual act that violates North Carolina criminal laws is not consensual, and in some instances the statutes specifically state that consent is not a defense. North Carolina sex offense laws are found in Chapter 14 of the North Carolina General Statutes.

## **V. CONSENSUAL SEXUAL RELATIONSHIPS AT SALEM COLLEGE**

**Faculty/Staff/Students.** Salem College deems unwise and discourages romantic or sexual relationships between faculty/staff members and students. Any faculty/staff member in a relationship with a student should understand that such a relationship could result in a sexual harassment allegation.

All romantic or sexual advances of any kind by faculty or staff toward students who are minors is strictly prohibited.

Further, Salem College deems unethical and discourages romantic or sexual relationships between faculty/staff members and students when a power differential exists between the individuals. Examples of a power differential includes, but is not limited to, a faculty member and a student in the faculty member's class; a coach and a student on the coach's team; an academic advisor/student advisee. Romantic or sexual relationships between faculty/staff members and students in such a circumstance are inappropriate because the faculty/staff member has professional responsibility (such as grading and/or advising) toward the student. While such relationships may appear consensual, the student's voluntary consent may be questioned as a result of the power imbalance in such relationships.

**Supervisors/Employees.** Any faculty or staff supervisor/employee relationship whether involving faculty or staff of a romantic or sexual nature is unethical and inappropriate. While such relationships may appear to be consensual, the employee's voluntary consent may be questioned as a result of the power imbalance in such relationships.

## **VI. MANDATORY REPORTING FOR MINORS**

Salem employees suspecting abuse, neglect, or any other potential crimes involving students under the age of eighteen (18) must immediately report those concerns to the Title IX Coordinator, or the Vice President for Finance and Administration, who will then report the abuse or neglect to the Director of the Department of Social Services in the county where the minor resides or is found. State law requires mandatory reporting of suspected abuse or neglect of any minor. (*See* North Carolina General Statutes § 7B-301)

## **VII. SEXUAL MISCONDUCT INVESTIGATION AND RESOLUTION PROCEDURES**

Salem has adopted the following procedures to receive, investigate, and resolve reported violations of this policy. These procedures are designed to provide a supportive process for individuals who report sexual misconduct and to ensure a fair process for individuals who are accused of a policy violation. Internal investigations are intended to ensure that Salem College meets its commitment to an open and inclusive educational and employment environment. These procedures also describe the College's efforts to conduct a timely, thorough, and fair investigation as required by law.

The Title IX Coordinator is Erin Jones Adams, Associate Vice President for Administration (Telephone: (336) 721-2702, Email: erin.adams@salem.edu). The Deputy Title IX Coordinator is

Cheryl Hamilton, Payroll and Benefits Manager (Telephone: (336) 917-5329, Email: cheryl.hamilton@salem.edu).

**General Responsibilities of the Title IX Coordinator:**

1. The Title IX Coordinator has primary responsibility for coordinating efforts for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent sex discrimination and sexual misconduct.
2. Accept all complaints and referrals from any location where the College conducts educational programs.
3. Keep accurate records of all complaints and referrals for the required time period according to the College's record retention policy.
4. Conduct investigations to the level required under College policy and state and federal laws.
5. Identify specific corrective measures to stop, remediate, and prevent sex discrimination and sexual misconduct.
6. Make recommendations for corrective measures including training, counseling, and/or discipline, when appropriate.
7. Oversee the implementation of corrective measures, which may include follow-up to ensure that appropriate action was taken to complete the recommended actions.

**Duty to Identify and Report.** Chairs, deans, department administrators, and supervisors have a duty to identify and report discriminatory or other behaviors that violate this policy. Employees and persons with responsibility for supervising or ensuring safety of others (including student employees in the course of their employment duties) have a duty to report discriminatory behaviors and sexual misconduct observed or reported to them. Chairs, deans, department administrators and supervisors should be directly involved in resolving allegations of discrimination, and have a duty to monitor the respondent's behavior and to take appropriate disciplinary action if s/he violates college policy or procedure, including further acts of discrimination and/or acts of retaliation.

In some circumstances, investigation and disposition of complaints may be referred to other offices within the College, such as Payroll and Benefits. However, ultimate oversight remains with the Title IX Coordinator to coordinate and ensure the College's compliance with Title IX and other state and federal laws. To ensure College-wide compliance with this policy and with federal and state law, the Title IX Coordinator must be advised of all reported incidents of sex discrimination, sexual harassment, or any other form of sexual misconduct and their resolution, regardless of where the complaint is brought, investigated, or resolved. The Title IX Coordinator will monitor and coordinate the resolution of complaints by other offices with concurrent jurisdiction over Title IX discrimination, sexual harassment, or other forms of sexual misconduct.

**Options for Resolution.** Individuals reporting discrimination or sexual misconduct will be informed about options for resolving potential violations. These options include informal dispute resolution, referral to other College offices or programs, formal investigation by the Title IX Coordinator, and use of resources outside the College process. The complainant will also receive information about remedies for the individual allegedly harmed by the sexual misconduct, and

disciplinary actions that might be taken against the accused as a result of the report, including information about the procedures leading to such outcomes.

**Procedures for Informal Resolution.** Salem encourages informal resolution when the parties choose to resolve the situation cooperatively, and when inappropriate behavior does not rise to the level of violation of College policy as determined by the Title IX Coordinator. Informal resolution may include an inquiry into the facts, but typically does not rise to the level of an investigation.

Informal resolution includes, but is not limited to, options such as referral to another campus office or program, separation of the parties, referral of the parties to counseling programs, or conducting targeted educational and training programs. Situations that are resolved through informal resolution are subject to follow-up after a period of time to ensure that resolution has been implemented effectively. Steps taken by the Title IX Coordinator to help the parties achieve informal resolution will be documented.

Some reports of discrimination or sexual misconduct may not be appropriate for informal resolution, but may require a formal investigation, or a report to the Department of Social Services or a law enforcement agency, at the discretion of the Title IX Coordinator. Informal resolution is never appropriate for matters involving the abuse or neglect of a minor.

**Procedures for Formal Investigation.** In response to reports of discrimination or sexual misconduct in cases where the complainant does not wish to engage in informal resolution, where informal resolution is inappropriate, or in cases where attempts at informal resolution are unsuccessful, the Title IX Coordinator may conduct a formal investigation. In such cases, the individual making the report shall be encouraged to file a written complaint. In cases where there is no written complaint, such as situations involving a third-party complaint, the Title IX Coordinator may initiate an investigation after making a preliminary inquiry into the facts, and will inform the person(s) who were allegedly harmed by the misconduct of the decision to initiate an investigation.

#### **Title IX Investigation Guidelines:**

1. The Title IX Coordinator is the designated College administrator to conduct a formal investigation of allegations of discrimination or sexual misconduct, and to coordinate the College response(s). Cheryl Hamilton, Payroll and Benefits Manager, will assist the Title IX Coordinator as necessary as her deputy designee.
2. The respondent will be provided a copy of the written complaint or otherwise informed of the allegations against him/her. If the respondent cannot be located, notification attempts will be documented.
3. The investigator(s) will be familiar with Salem's sexual misconduct policy, and have training and/or experience conducting investigations.
4. The investigation will generally include interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents as appropriate.
5. Disclosure of facts to witnesses will be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in the investigation will be advised that

maintaining confidentiality is essential to protect the integrity of the investigation, and will be asked to refrain from discussing the pending investigation.

6. The investigation will be completed as promptly as possible, and in most cases within 60 working days of the date the written complaint was received. In the event that an investigation cannot be completed within 60 days, the parties will be notified in writing.
7. Salem College uses a preponderance of the evidence standard in determining responsibility of misconduct under this policy. This standard means that the offense is more likely than not to have occurred.
8. An investigation will generally result in a written report that includes a statement of the allegations and issues, a summary of the information considered, findings of fact, and a determination by the investigator as to whether College policy has been violated. For allegations of discrimination or other sexual misconduct covered by this policy, there are three possible findings:
  - a. Substantiated: it is more likely than not that the allegation is true.
  - b. Unsubstantiated: it is not possible to determine whether the allegation is true or untrue. There is insufficient evidence to prove or disprove that the allegation is true.
  - c. Unfounded: it is more likely than not that the allegation, while made in good faith, is untrue. A finding that the allegations are unfounded does not indicate that the complaint was improper or knowingly false.
9. Making a false complaint or giving false information during an investigation is a violation of this policy, and the basis for discipline including expulsion or termination. Evidence of false complaints or false information will be referred by the Title IX Coordinator to the appropriate administrator or the President.
10. The investigation report also may contain a recommendation for actions to resolve the complaint, including but not limited to educational programs, counseling/coaching, mediation, remedies for the complainant, and a referral to disciplinary procedures, as appropriate.
11. The investigation report may be used as evidence in other related procedures, such as subsequent complaints, grievances and/or disciplinary actions.
12. The complainant and the respondent will be informed in writing of the completion of the investigation and the outcome of the investigation. The complainant will be informed of actions taken or recommended to resolve the complaint, if any, that are directly related to the complainant, such as a recommendation that the accused not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action, but shall not be informed of the details of the recommended disciplinary action without the consent of the respondent.
13. The respondent will be informed of the findings and of actions taken or recommended to resolve the complaint, and will be notified of referrals for disciplinary action and recommended disciplinary action.
14. The complainant and respondent may request a copy of the investigative report pursuant to College policy governing privacy and access to personal information.

15. Copies of the investigative report will be provided to those College administrators, academic leaders, and supervisors who are directly responsible for implementing measures to correct and prevent discriminatory or harassing conditions.
16. The College will respond, to the greatest extent possible, to reports of sexual misconduct brought anonymously or by third parties not directly impacted by the conduct. However, the response to such reports may be limited if information cannot be verified by independent facts.

**Post-Investigation Procedures:**

1. The Title IX Coordinator will refer any recommendation for discipline to the Office of the President for implementation in accordance with College policy.
2. The Title IX Coordinator will oversee implementation of corrective measures to attempt to prevent the discrimination or misconduct from recurring, and to limit its effects on the complainant and others.
3. Corrective measures may include follow-up by the Title IX Coordinator or her designees to ensure that appropriate action is taken to complete the recommended actions.
4. The Title IX Coordinator may require a College employee responsible for taking corrective action who decides not to adopt a recommendation of the Title IX Coordinator to explain this decision in writing.
5. If the Title IX Coordinator determines that the reasons offered by a College employee for not adopting a recommendation for corrective action are insufficient, the Title IX Coordinator will bring the matter to the attention of the appropriate administrator.

**Interim Measures.** Salem may determine that interim protective measures may be necessary to stop or prevent any form of sexual misconduct. Should the Title IX Coordinator, in consultation with other appropriate administrators, determine that a threat to the health and/or safety of the campus community exists, she will facilitate protective measures. Examples of available interim measures are changes in housing or working environments or increased security. A no contact order may also be issued, banning interaction or communication with the other party. Upon notice of a Title IX investigation, complainants and respondents may also immediately request interim measures of protection. These requests should be made to the Title IX Coordinator.

Salem College may, at any point in the Title IX process, place the respondent on investigative leave, reassignment, or authorize other types of temporary measures while an investigation is pending, including but not limited to, no contact provisions.

North Carolina criminal law grants certain interim protective measures to alleged crime victims. Further information about criminal law interim measures can be obtained from the Winston-Salem Police Department (336-773-7700).

Salem will maintain as confidential any accommodations or protective measures provided to victims so long as it does not impair the ability to provide such measures.

**Resources for Victims of Sexual Misconduct.** If an employee becomes aware that a student has been a victim of sexual misconduct, the employee should advise the student to notify the Title IX Coordinator. The employee can also advise the student of other support resources such as Salem Public Safety, Health Services, Counseling Services, the Chaplain, or other resources identified in the Sexual Misconduct Policy contained in the Student Handbook (which includes a complete listing of resources and reporting options). The employee should then notify the Title IX Coordinator of the student report of sexual misconduct. When providing information and advice to a student, the employee should keep in mind whether the student wants a confidential resource. Only employees of Salem Counseling Services and Health Center and the Salem Chaplain are authorized to keep student reports strictly confidential.

If an employee has been a victim of sexual misconduct in the workplace or related to the employee's employment with Salem, the employee must notify Erin Jones Adams, Title IX Coordinator, or Cheryl Hamilton, Deputy Title IX Coordinator.

If an employee has been a victim of sexual misconduct unrelated to employment with Salem, the employee may call the Winston-Salem Police Department or Forsyth County Sheriff's Office as appropriate, and/or Forsyth Family Services (336-722-4457), which has a victim assistance line that is available 24 hours per day, 7 days a week. The employee may also obtain a list of available resources from the Title IX Coordinator.

**Retaliation Prohibited.** No official, employee, student or agent of Salem shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights under Salem's Sexual Misconduct Policy or other campus security policies.

Retaliation against an individual who in good faith reports sexual misconduct or any criminal activity, or who participates in an investigation or proceeding involving sexual misconduct or any criminal activity, is strictly prohibited. An individual who is subjected to retaliation (e.g., threats, intimidation, reprisals, or adverse action) because the person (a) made a report of sexual misconduct, in good faith, (b) assisted someone with a report of sexual misconduct, or (c) participated in an investigation or resolution of a report of sexual misconduct, may make a report of retaliation to the Title IX Coordinator for investigation.

**Legal Resources.** Additional information about legal options and resources may be available from the Winston-Salem Police Department (336-773-7700), Family Services (336-722-4457), or a personal attorney.

Regardless of the method of resolution or the outcome of a Title IX investigation, the complainant is at all times free to pursue a complaint with the Equal Employment Opportunity Commission, the United States Department of Education (Office for Civil Rights), the United States Department of Labor, or by consulting an attorney at her or his own expense.

**Confidentiality.** The College will protect the privacy of individuals involved in a report of discrimination or sexual harassment to the extent allowed by state and federal law and College policy. A report of discrimination or sexual misconduct may result in the gathering of extremely

sensitive information about individuals in the College community. Neither the publicly available crime log nor timely community warnings include the names of victims.

The Title IX Coordinator attempts to balance an individual's privacy with the institutional responsibility of providing a safe environment. Confidentiality is an aspiration, but is not always possible or appropriate. An individual's requests regarding the confidentiality of reports of discrimination or sexual harassment will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the College's legal obligation to ensure a working and learning environment that is free from discrimination, sexual harassment, and other forms of sexual misconduct and the rights of the respondent to be informed of the allegations. Some disclosure may be necessary to ensure a complete and fair investigation.

**Records Retention.** The Title IX Coordinator is responsible for maintaining sexual misconduct records, including incident reports, investigations, and resolutions. Records will be maintained in accordance with College records policies and applicable law, generally seven (7) years after the date the complaint is resolved. Records may be maintained for a longer period of time at the Title IX Coordinator's discretion. All records pertaining to pending litigation or a request for records shall be maintained in accordance with instructions from College legal counsel. Requests for information should be directed to the Title IX Coordinator.

**Annual Report.** The Title IX Coordinator should provide the President with an annual report.

*This policy was last updated November 19, 2017, and it may be updated at any time. To view a current version of the policy, please visit the Title IX webpage on the Salem College website. This policy applies to all reports of sexual misconduct occurring on or after the effective date of this policy. Where the date of the alleged sexual misconduct precedes the effective date of this policy, the definitions of misconduct in existence at the time of the alleged incident(s) will be used. The procedures under this policy, however, will be used to investigate and resolve all reports made on or after the effective date of this policy, regardless of when the incident(s) allegedly occurred.*