

Policy 6.21

Campus Sexual Violence Act Violence Against Women Act (SaVE Act VAWA) Policy

The College complies with the Campus Sexual Violence Act/Violence Against Women Act (SaVE Act/VAWA) that was signed into law by President Obama on March 7, 2013, with the final rule becoming effective on July 1, 2015. The new law requires the College to report domestic violence, dating violence and stalking in addition to crimes already required to be reported under the Clery Act.

The College prohibits the crimes of rape, acquaintance rape, domestic violence, dating violence, sexual assault and stalking, and maintains statistics about the number of incidents of same on college property, which includes the campus property proper, noncampus buildings and property, public property immediately adjacent to or accessible from the campus, and areas within the patrol jurisdiction of the Beaufort County Community College Police Department (BCCC PD).

STATISTICS

The Clery Act requires the College to maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault, and stalking that meet the definition of those terms. All such statistics are compiled annually in a report which may be found online or at the BCCC PD.

The annual report will also describe the College's ongoing prevention and awareness campaigns for students and employees.

DEFINITIONS

For purposes of the law, the following definitions apply. Additional definitions may be found at 34 CFR 668.46.

Domestic Violence includes asserted violent misdemeanor and felony offenses committed by the Victim's current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, current or former cohabitant, persons similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

Dating Violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be determined by the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of same. Dating violence does not include acts that fall under the definition of domestic violence.

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Hate Crimes include categories of bias based upon the victim's actual or perceived race, religion, gender, gender identity, sexual orientation, ethnicity, national origin and disability, and includes evidence that the victim was intentionally selected because of the perpetrator's bias against the victim.

Stalking means a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her or other's safety, or to suffer substantial emotional distress. Please see NCGS 14 277.3A for North Carolina's definition of stalking along with the public policy statement.

"Sexual act" means cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes.

"Sexual contact" means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.

"Touching" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

Rape is intercourse without consent or done by force, and encompasses the categories of vaginal rape, sodomy and sexual assault with an object.

Acquaintance rape is forced sexual intercourse with a person known to the victim.

Sexual assault is any involuntary sexual act in which a person is threatened, coerced, or forced to engage against their will, or any sexual touching of a person who has not consented. This includes rape (such as forced vaginal, anal or oral penetration), groping, forced kissing, child sexual abuse, or the torture of the victim in a sexual manner.

Preponderance of the evidence is the standard used by the College in determining whether a crime has occurred. This standard is defined by NC Case law as the greater weight of the evidence as follows:

The greater weight of the evidence does not refer to the quantity of the evidence, but rather to the quality and convincing force of the evidence. It means that you must be persuaded, considering all of the evidence that the necessary facts are more likely than not to exist.

Consent to sexual contact is the equal approval, given freely, willingly, and knowingly of each participant to desired sexual involvement in accordance with age of consent laws. A person compelled to engage in sexual contact by force, threat of force, or coercion has not consented to contact. Lack of mutual consent is the crucial factor in sexual offenses. Consent cannot be given if a person is unable to resist or consent because of a mental or physical condition or incapacitated due to drugs, alcohol, or a reasonably perceived power differential that substantially impacts the person's ability to resist the sexual

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contact. Providing alcohol or drugs to facilitate sexual activity is a violation of this policy. Use of alcohol or other drugs will not excuse behavior that violates this policy.

The College will not recognize consent if the complainant is:

- unconscious or asleep
- frightened
- physically or psychologically pressured or forced
- intimidated
- incapacitated because of a psychological condition
- incapacitated by use of drugs or alcohol
- rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act
- unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act

Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Similarly, previous relationships or previous consent do not imply consent to future sexual activity. In the absence of mutually understandable words or actions, it is the responsibility of the initiator or the person who wants to engage in the specific sexual activity to make sure that he/she has the consent from the other person(s). Mutually understandable consent must be obtained by the initiator at every stage of sexual interaction. The requirements of this policy apply regardless of the sex, sexual orientation, gender expression, or identity of individuals engaging in sexual activity.

HATE CRIMES BASED ON NATIONAL ORIGIN, ETHNICITY, AND GENDER IDENTITY

National Origin, Ethnicity and Gender Identity are now included on the list of hate crimes that must be reported under the Clery Act. These crimes are federal offenses and are investigated by the FBI. Since NC law does not address hate crimes based on National Origin and Gender Identity anyone who believes that they are the victim of one of these crimes will need to report it to the federal authorities.

National Origin and Ethnicity hate crimes are those criminal offenses committed against a person, property, or society that is motivated, in whole or in part, by the offender's bias against a race, ethnicity/national origin, or because the victim is or appears to be from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not). National origin and Ethnicity crimes can also arise because of marriage, association with a person of a certain national origin, or because of their connection with an ethnic organization or group.

- National Origin and Ethnicity hate crimes can occur when the victim and the offender are the same national origin or ethnicity.
- Gender Identity hate crimes are those criminal offenses committed against a person, property or society that is motivated, in whole or in part, by the offender's bias against a person's sexual orientation. This includes homosexuality, bisexuality, transsexualism and cross dressing.

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- National Origin, Ethnicity and Gender Identity crimes are those in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person.
- National Origin, Ethnicity and Gender Identity hate crimes occur when "bullying or harassing behavior" (any pattern of gestures or written, electronic, or verbal communications, or any physical act or any threatening communication)
 - (1) Places a student or school employee in actual and reasonable fear of harm to his or her person or damage to his or her property; or
 - (2) Creates or is certain to create a hostile environment by substantially interfering with or impairing a student's educational performance, opportunities, or benefits. For purposes of this section, "hostile environment" means that the victim subjectively views the conduct as bullying or harassing behavior and the conduct is objectively severe or pervasive enough that a reasonable person would agree that it is bullying or harassing behavior.
- Bullying or harassing behavior includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics.

INVESTIGATION AND CONDUCT OF STUDENT DISCIPLINE

If you believe you are the victim of any of these crimes:

- A. Preserve all evidence related to the commission of the crimes. This is of vital importance as it will assist in proving that the alleged criminal offense occurred and/or in obtaining a judicial no-contact, restraining or protective order as the case may warrant.
- B. You have the option to notify and seek assistance from law enforcement and campus authorities. Reporting of alleged crimes can be made to the BCCC PD or the Beaufort County Sheriff Office.
- C. You have the right to apply for judicial no-contact, restraining, and protective orders. You will be provided with assistance on what you need to do.
- D. The standard of "preponderance of the evidence" will be used to determine if a crime has occurred. Investigations will be done in such a manner that protects the safety of victims and promotes accountability.

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- E. Sanctions and protective measures that the College may impose following a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault or stalking, could include being dismissed from the College and/or permanent banning from the campus.
- F. Both the accused and the alleged victim are entitled to the same rights at a disciplinary hearing - both have the right to be accompanied to the hearing by legal counsel or an advisor of their choice, and to access, review, and present witnesses and other evidence. Appeals will be handled according to the procedures for student rights and due process found in the student catalog and on the college's website.
- G. Both the accused and alleged victim will be notified in writing and simultaneously of the following:
 - (1) The outcome of the proceeding.
 - (2) Appeal procedures.
 - (3) Any change to the result before it becomes final.
 - (4) When the result will become final.
- H. The victim's confidentiality will be protected, including record-keeping that excludes the victim's personally identifiable information.
- I. Disciplinary proceedings shall provide a prompt, fair and impartial investigation and resolution.
- J. Compliance with the above proceedings does not constitute a violation of Section 444 of the General Education Provisions Act found at 20 UCS 1232g, also known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

POSSIBLE SANCTIONS AND PROTECTIVE MEASURES

Sanctions that may be imposed after a final determination of violations of this policy include verbal warning, probation, suspension, expulsion and being banned from the College campus.

RISK REDUCTION/AWARENESS PROGRAMS

The College offers primary and ongoing prevention and awareness programs that promote awareness and risk reduction of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. Additionally, information on risk reduction, how to recognize warning signs of abusive behavior, and how to avoid potential assaults or abusive relationships is included in new student education. All such information is found on the College's website and is also included in new student orientation materials.

BYSTANDER INTERVENTION OPTIONS

The College's student education program sets forth safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or to

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intervene when there is a risk of domestic violence, dating violence, sexual assault or stalking against another, and include word of caution, offer of assistance, and notification to BCCC PD or Beaufort County Sheriff's Office. Bystanders are always advised to take reasonable and prudent actions to protect their own safety and that of others. For further information, please see the College's website and new student orientation materials

References

Legal References: *1C SBCCC 200.94*

SACSCOC References: *3.11.2*

Cross References:

- [Campus Conduct Policy](#)
- [BCCC Equal Employment Opportunity, ADA, Non-Discrimination and Anti-Harassment \(including Sexual Harassment\) Policy](#)
- [BCCC Equal Employment Opportunity, ADA, Non-Discrimination and Anti-Harassment \(including Sexual Harassment\) Procedure](#)

History

Senior Staff Review/Approval Dates: *8/3/15*

Board of Trustees Review/Approval Dates: *2/4/14, 8/4/15*

Implementation Dates: *2/4/14*