Appendix E
Gender-Based Misconduct Policy

INTRODUCTION
Members of the university community, guests and visitors have the right to be free from sexual violence. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University believes in a zero tolerance policy for gender-based misconduct. When an allegation of misconduct is brought to an appropriate administration’s attention, and a respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT
The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don’t. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence—without actions demonstrating permission—cannot be assumed to show consent. Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex. Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “no.”

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS
There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become
unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The university does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the university. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged. Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

SEXUAL VIOLENCE -- RISK REDUCTION TIPS
Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

1. If you have limits, make them known as early as possible.
2. Tell a sexual aggressor “NO” clearly and firmly.
3. Try to remove yourself from the physical presence of a sexual aggressor.
4. Find someone nearby and ask for help.
5. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
6. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
2. Understand and respect personal boundaries.

3. DON’T MAKE ASSUMPTIONS about consent; about someone’s sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.

4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.

5. Don’t take advantage of someone’s drunkenness or drugged state, even if they did it to themselves.

6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don’t abuse that power.

7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.

8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

In campus hearings, legal terms like “guilt, “innocence” and “burdens of proof” are not applicable, but the university never assumes a student is in violation of university policy. Campus hearings are conducted to take into account the totality of all evidence available, from all relevant sources. The university reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students’ rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the university reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The university will consider the concerns and rights of both the complainant and the person accused of sexual misconduct.

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

1. Sexual Harassment

2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Non-Consensual Sexual Intercourse (or attempts to commit same)

4. Sexual Exploitation

1. SEXUAL HARASSMENT:
   Sexual Harassment is
   - unwelcome, gender-based verbal or physical conduct that is,
   - sufficiently severe, persistent or pervasive that it,
   - unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the university’s educational program and/or activities, and is
   - based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

   Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

2. NON-CONSENSUAL SEXUAL CONTACT:
   Non-Consensual Sexual Contact is
   - any intentional sexual touching,
   - however slight,
   - with any object,
   - by a man or a woman upon a man or a woman,
   - that is without consent and/or by force.

   Sexual Contact includes:
   
   Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groins, genitals, mouth or other orifice.

3. NON-CONSENSUAL SEXUAL INTERCOURSE:
   Non-Consensual Sexual Intercourse is any sexual intercourse however slight, with any object, by a man or woman upon a man or a woman, that is without consent and/or by force.

   Intercourse 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), no matter how slight the penetration or contact.
4. SEXUAL EXPLOITATION

Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- prostituting another student;
- non-consensual video or audio-taping of sexual activity;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in voyeurism;
- knowingly transmitting an STI or HIV to another student;
- Exposing one’s genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

ADDITIONAL APPLICABLE DEFINITIONS:

Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.

Previous relationships or prior consent cannot imply consent to future sexual acts.

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, 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.

NOTE: There is no requirement that a party resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the
absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

In order to give effective consent, one must be of legal age.

Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.

Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).

This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. 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 is a violation of this policy. More information on these drugs can be found at http://www.911rape.org/

Use of alcohol or other drugs will never function as a defense to a violation of this policy.

The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy. For reference to the pertinent state statutes on sex offenses, please see [insert reference here].

OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN GENDER-BASED)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;

2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;

3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;

4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);

5. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).
6. Violence between those in an intimate relationship to each other;

7. Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

QUESTIONS AND ANSWERS

Here are some of the most commonly asked questions regarding University’s sexual misconduct policy and procedures.

*Does information about a complaint remain private?*

The privacy of all parties to a complaint of sexual misconduct must be respected, except insofar as it interferes with the university’s obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the complainant or the accused student may lead to conduct action by the university.

In all complaints of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain university administrators are informed of the outcome within the bounds of student privacy. If there is a report of an act of alleged sexual misconduct to a conduct officer of the university and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

*Will my parents be told?*

No, not unless you tell them. Whether you are the complainant or the accused student, the University’s primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, in a life-threatening situation, [or if an accused student has signed the permission form at registration which allows such communication].

*Will the accused student know my identity?*

Yes, if you file a formal complaint. Sexual misconduct is a serious offense and the accused student has the right to know the identity of the complainant/alleged victim. If there is a hearing,
the university does provide options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

*Do I have to name the perpetrator?*

Yes, if you want formal disciplinary action to be taken against the alleged perpetrator. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy above to better understand the university’s legal obligations depending on what information you share with different university officials). Victims should be aware that not identifying the perpetrator may limit the institution’s ability to respond comprehensively.

*What do I do if I am accused of sexual misconduct?*

DO NOT contact the alleged victim. You may immediately want to contact someone in the campus community who can act as your advisor. You may also contact the Student Conduct Office, which can explain the university’s procedures for addressing sexual misconduct complaints. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation.15

*Will I (as a victim) have to pay for counseling/or medical care?*

Not typically, if the institution provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc. [In this state, victims may be ineligible for state-based assistance if they were engaged in any illegal activity during the assault or if they fail to cooperate with criminal prosecution].

*What about legal advice?*

Victims of criminal sexual assault need not retain a private attorney to pursue prosecution because representation will be handled by the District Attorney’s *Prosecutor’s+ office. You may want to retain an attorney if you are the accused student or are considering filing a civil action. The accused student may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding.

*What about changing residence hall rooms?*

If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. If you want the accused student to move, and believe that you have been the victim of sexual misconduct, you must be willing to pursue a formal or informal university complaint. No contact orders can be imposed and room changes for the accused student can usually be arranged quickly. Other accommodations available to you might include:
-- Assistance from university support staff in completing the relocation;
-- Arranging to dissolve a housing contract and pro-rating a refund;
-- Assistance with or rescheduling an academic assignment (paper, exams, etc.);
Taking an incomplete in a class;
-- Assistance with transferring class sections;
-- Temporary withdrawal;
-- Assistance with alternative course completion options;
-- Other accommodations for safety as necessary.

*What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim’s person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the Hospital Emergency Room, before washing yourself or your clothing.16 The Sexual Assault Nurse Examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, 7 days a week (call the Emergency Room if you first want to speak to the nurse; ER will refer you). A victim advocate from the institution can also accompany you to Hospital and law enforcement or Security can provide transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligation him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

*Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?*

No. The severity of the infraction will determine the nature of the university’s response, but whenever possible the university will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and the university does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

*Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct complaint?*

The use of alcohol and/or drugs by either party will not diminish the accused student’s responsibility. On the other hand, alcohol and/or drug use is likely to affect the complainant’s
memory and, therefore, may affect the outcome of the complaint. A person bringing a complaint of sexual misconduct must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his/her complaint. If the complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the accused without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by an accused student.

*Will either party’s prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?*

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present complaint.

*What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution’s sexual misconduct policy, you should contact the institution’s student conduct office or victim advocate’s office. The institution provides advisors who can help you to define and clarify the event(s), and advise you of your options.