

Shaw University Gender-Based Misconduct Policy for Students

Responsible Executive: President of Shaw University
Responsible Office: Student Affairs

Approved-On Date:

President's Approval on _____

Legal Counsel Approval on _____

Effective Date: _____

I. Policy Statement

Gender-based violence is an unfortunate reality on college campuses in the United States. If you have experienced gender-based violence, you are not alone.

- 1 in 6 women will experience completed or attempted rape in her lifetime*
- 1 in 33 men will experience completed or attempted rape in his lifetime*
- College-age women are 4 times more likely to be sexually assaulted than women in the general population**
- 20% of college women (1 in 5) will experience completed or attempted sexual assault at some point during college***
- 4 in 5 campus survivors of sexual assault knew their attackers****

Shaw University is committed to providing a safe learning and working environment and, in compliance with federal law, has adopted policies and procedures to prevent and respond to incidents of gender-based misconduct including sexual assault, domestic violence, dating violence, stalking and sexual harassment. These gender-based misconduct acts are serious violations of federal, state, and local laws, and are also serious violations of Shaw University's student judicial code, faculty standards, and employee policies. Such misconduct is strictly prohibited and will not be tolerated at Shaw University. This policy applies on and off campus, as well as in any situation where Shaw University has reasonable responsibility to ensure the safety and welfare of the University community which will require action pursuant to this policy. These guidelines apply to all students.

II. Prohibited Conduct

A. Gender-Based Misconduct: A broad range of behaviors focused on sex and/or gender discrimination that may or may not be sexual in nature. Sexual harassment, sexual assault, gender based harassment, stalking, and intimate partner violence are forms of gender-based misconduct under this policy. Misconduct can occur between strangers or acquaintances, including between people involved in an intimate or sexual relationship. Gender-based misconduct can be committed by anyone regardless of gender identity, and it can occur between people of the same or different sex or gender.

- **Sexual Assault:** An assault that is sexual in nature including a sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will when the victim is incapable of giving consent (due to incapacitation by alcohol or drug use, unconsciousness, disability, or other forms of helplessness).

- **Sex while incapacitated:** To have sex with someone whom you know to be, or should know to be, incapable of making a rational, reasonable decision due to his or her consumption of substances is a violation of policy. If you choose to drink alcohol or use other drugs, you run the risk of impaired thinking and communication, which may result in inappropriate choices about sex.
- **Sexual Exploitation:** Any conduct in which a student takes advantage of another without his/her consent for his/her own advantage or benefit or to benefit or to benefit or advantage anyone other than the one being exploited.
- **Sexual Harassment:** Unwelcomed conduct of a sexual nature. It includes unwelcome sexual advances, sexual gestures, touching, requests for sexual favors, verbal or non-verbal physical aggression, dirty jokes, spreading rumors of a sexual nature, comment or questions about a person's body, dress or personal life, offensive language of a sexual nature, intimidation, hostility, or stereotyping, even if those acts do not involve conduct of a sexual nature.
- **Intimate Partner Violence (also known as Domestic and Dating Violence):** A pattern of abusive behavior in an intimate relationship that is used by one partner to gain or maintain power and control over another partner such as the use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse.
- **Stalking:** When a person, on more than one occasion, engages in any behavior or conduct directed at another person with the intent to place that other person in reasonable fear. Examples of stalking behaviors include, but are not limited to: sending unwanted or non-consensual communications (letters, telephone calls, voice mails, e-mail messages, text messages); the physical appearances of the stalker; unwanted gifts; threatening or obscene gestures; pursuing or following; surveillance or other observation; trespassing; vandalism; and non-consensual touching.
- **Cyber Stalking:** A form of stalking or harassment that involves the intentional act of using the Internet (social media such as Instagram, Twitter, or Facebook) to cause someone emotional distress.
- **Revenge Porn:** The publication of sexually explicit photographs or videos posted without the consent or knowledge of the subject of the content. "Involuntary porn" or "nonconsensual pornography" to emphasize that subject of the pornographic photos and videos have not consented to the publication of their most intimate moments.

B. Related Concepts

- **Consent:** is based on an explicit understanding and mutual agreement and permission to engage in any form of sexual activity with a person or persons legally capable of providing consent. Sexual activity with a minor is unlawful with or without consent and sexual activity with a person who is incapacitated mentally, emotionally, or physically. Forcing or manipulating someone into having sex is not consent. It is the duty of the sexual aggressor to show respect and to recognize boundaries, and to ensure the partner has the capacity to provide consent. It should also be noted that even if a person gives consent, the person has the right to withdraw consent at any time. 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 (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. **Consent can be withdrawn at any time.**

- **Mental Incapacity** means the condition of the victim existing at the time of the sexual act prevents the victim from understanding the nature or the consequences of the sexual act involved, and about which the accused knew or should have known.
- **Force:** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force includes threats, intimidation (implied threats) and coercion that overcome resistance or product consent (i.e., threats such as “Have sex with me, or I’ll hit you,” etc.)
- **Coercion:** is unreasonable pressure for sexual activity. Coercive behavior can occur based on the type of pressure someone uses to get consent from another. For example, when someone makes it clear they do not want sex, or they want to stop, or they do not want to go past a certain point of sexual interaction...continued pressure beyond that point can be coercive.

III. Resources for Students

A. Counseling and Victim Support Services

A victim may speak confidentially to a counselor or advocate on campus or off-campus to gain valuable resources and information regarding crisis intervention (***See Chart Below on page 2***).

B. Victim Assistance Resources

Shaw University offers important resources to the victims of gender-based misconduct crimes including medical treatment, counseling and advocacy that they may wish to utilize. At Shaw University, the Office of Student Affairs, the Health Center and Counseling Center are available to assist students free of charge. The Office of Human Resources is available to help employees also free of charge. These offices will help victims consider their options and navigate through any resources or recourse they elect to pursue. A victim need not make a formal report to law enforcement or Shaw University to access these resources that include the following:

ON CAMPUS RESOURCES CHART

Resource	Contact	Location
Counseling Center *Confidential Resource	(919)546-8203 (919)546- 8525 (919)546 -8283	Mobile Unit #744
Student Health Services	(919)546-8286	Fleming Kee Residence Hall
Campus Police and Security	(919)546-8249	Graphics Building, 730 S. Blount St.
Title IX Coordinator Dr. Richard C. Barnes	(919)719-1897 richard.barnes@shawu.edu	Tyler Hall, 1st Floor

OFF CAMPUS RESOURCES CHART

Resource	Contact	Location
Wake Medical Center(*Rape Kit Provided)	(919)350-8000	300 New Bern Ave. Raleigh, NC 27610
Raleigh Police Department	(919)996-3855	218 W Cabarrus St Raleigh, NC 27601
Local Rape Crisis Center: Interact of Wake County (Rape Kit Provided)	(919)828-7750(mainline) <u>24-hour Crisis Line numbers :</u> Sexual Assault Services: (919)828-3005 Domestic Violence Services (919)828-7740 Solace Center(Forensic Exam Center): (919)828-3067	1012 Oberlin Rd. Raleigh, NC 27605
North Carolina Coalition Against Sexual Assault	(919) 871-1015	811 Spring Forest Rd., Suite 900 Raleigh, NC 27609

IV. Reporting an Incident

Complaints against students are handled by our Office of Judicial Services. Responsible Employees and Students must always report complaints to the Shaw University Title IX Coordinator. Students may also report any incidents of gender-based misconduct to the Office of Student Affairs. Campus Police will assist any victim in notifying law enforcement, including our local police department, but only if victims elect to do so.

If a student, employee, or visitor has been the victim of an incident of gender-based violence on campus they can report to Campus Police. If off campus they should immediately report the emergency to 911 or The Raleigh Police Department at 919-546-8249. For additional contact information:

1. The Shaw University Title IX Coordinator oversees all matters related to gender discrimination, including gender-based misconduct. Students, faculty and staff may contact Lee Wood, Title IX Coordinator, Department of Human Resources, Tyler Hall, First Floor, (919)546-8533, lwood@shawu.edu
2. Complaints Against Shaw University Employees: The Department of Human Resources oversees discipline involving faculty and staff, (919)546-8533
3. Emergencies and Criminal Investigations: Contact Shaw University Campus Police, (919)546-8249
4. Complaints against Students: The Office of Judicial Services oversees student discipline. Contact Mrs. Agnes Baxter, Director of Judicial Services, (919)546-8618

A. Blind Reporting - “Blind reporting” is used to describe the method for providing information to police about a gender-based misconduct crime (or any other type of incident, for that matter) without recording any identifying information. Confidentiality of the victim is therefore maintained. On the basis of such information, law enforcement personnel can then conduct a limited investigation, perhaps by checking to see if there are any other similar reports – either by geography or pattern of behavior. The agency can thus increase its intelligence on the realistic numbers and characteristics of gender-based misconduct crimes taking place in a particular area. The information may also help investigators to link together gender-based misconduct crimes committed by the same perpetrator, based on the similarities in the geographic region or patterns of behavior.

B. Victim Confidentiality

The University recognizes the sensitive nature of gender-based misconduct crimes and is committed to protecting the privacy of any individual who reports an incident of sexual violence. Different officials on campus are, however, able to offer varying levels of privacy protection to victims. Some information in reports made to law enforcement may be made public consistent with the requirements under N.C. Gen. Stat 132.

Confidentiality will be maintained as much as possible; however there are limits to confidentiality when reports are made to University officials, as designated Responsible Employees are required to report to the Title IX Coordinator. The University will not make identifying information about the victim public. Reports made to medical professionals and mental health counselors will not be shared with third parties except in cases of imminent danger to the victim or a third party.

Some level of disclosure may be necessary to ensure a complete and fair investigation, although the University will comply with requests for confidentiality to the extent possible.

North Carolina requires mandatory reporting of child abuse (N.C. Gen. Stat 7B-301). Abuse of a disabled or elder adult (N.C. Gen Stat 108 A-2), and certain offenses including sexual assault or rape (N.C. Gen Stat 115C-288(g)).

C. The Role of Certain Employees to Report and Respond to Gender-based misconduct Crimes

The University encourages anyone who has experienced gender-based misconduct to talk to someone about what happened, to ensure they are informed of the available support, resources and applicable complaint processes and to allow the University to respond appropriately. The information below explains the obligations of certain employees to report information brought to their attention regarding incidents of sexual misconduct to the appropriate University officials.

1. **Responsible Employees** Pursuant to Title IX, a “responsible employee” includes those University employees who have the authority to redress gender-based misconduct, who have the duty to report incidents of gender-based misconduct, or whom a student could reasonably believe has this authority or duty.

The University’s responsible employees include, but are not limited to:

- All instructors, including full-time professors, adjuncts, lecturers, associate instructors (AIs), teaching assistants (TAs), and any others who offer instruction (whether in-person or online) or office hours to students;
- All advisors;
- All coaches, and other athletic staff who interact directly with students;
- All student affairs administrators;
- All residential hall staff;
- All employees who work in offices that interface with students; and
- All supervisors and University officials.

2. **Campus Security Authorities.** Pursuant to the Clery Act, campus security authorities (CSAs) are individuals who have significant responsibility for student and campus activities. The Act (34 CFR 668.46) defines a CSA as:

- A campus police department or a campus security department of an institution.
- Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department such as an individual who is responsible for monitoring entrance into institutional property.
- Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
- An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings.

3. **Title IX Coordinator:** Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex in any education program or activity that receives federal funding. Under Title IX, discrimination on the basis of sex can include sexual harassment, rape, and sexual assault. In accordance with its Title IX obligations, **Shaw University has designated Mr. Lee Wood of the Department of Human Resources as the University's Title IX Coordinator who works collaboratively throughout the University to enforce and monitor gender-based misconduct proceedings.** The Title IX coordinator should be notified immediately upon the report of any sexual assault or sexual misconduct in order to monitor proceedings and address any systematic problems or patterns of abuse. The Title IX Coordinator will conduct an investigation, which may take up to 60 days to complete, and provide results of the investigation to the Judicial Affairs committee for review and appropriate action. Persons with questions, concerns or complaints regarding Title IX violations should contact the Title IX Coordinator, Mr. Lee Wood who is located in Shaw University's Department of Human Resources, 1st Floor, Tyler Hall, (919)546-8533 lee.wood@shawu.edu.

4. **Retaliation.** Retaliation against any person involved in the investigation, including the complainant, respondent, witnesses, or the investigators, is strictly prohibited and may result in disciplinary action, including additional interim or permanent measures. The University defines retaliation as any adverse action taken against an individual who has participated in any manner in an investigation, proceeding, or hearing under these policies and procedures. Shaw University prohibits all forms of retaliation, intimidation, threats or harassment via online or through use of technology against anyone for reporting gender based misconduct crimes, and the University will take strong responsive action if retaliation occurs. Retaliation should be reported immediately to the Title IX Coordinator (*refer to chart for contact information).

V. UNIVERSITY RESPONSE

A. Victim Accommodation

Shaw University is committed to providing students and employees a safe learning or working environment regardless of whether or not they report an incident of gender-based misconduct to law enforcement or pursue any formal action. Upon request, Shaw University will make any reasonably available change to a victim's academic, housing, transportation, and/or working situation. Students may contact the Office of Student Affairs at 919-719-6333 or Residential Life for assistance.

If the victim reports to Campus Police, the office can refer the victim to local law enforcement to obtaining a North Carolina protective/restraining order from a criminal court. The University is committed to ensuring that any such order is fully upheld on all institutionally owned and controlled property. The University is also committed to protecting victims from any further harm, and Campus Police, Vice President of Student Affairs and Judicial Affairs may issue a no-contact.

B. Education Programs

The University is committed to increasing the awareness of and prevention of the forms of gender-based misconduct. All incoming students and new employees are provided with programming and strategies intended to prevent the occurrence of gender-based misconduct acts such as sexual assault, domestic violence, dating violence, and stalking before it occurs

through the changing of social norms and other approaches; that includes a clear statement that the University prohibits such acts, their definitions, the definition of consent, options for bystander intervention, information about risk reduction, and our policies and procedures for responding to these incidents. Ongoing prevention and awareness campaigns are also offered throughout the year. These programs include:

- a. Student Orientation
- b. New Employee Orientation
- c. Housing and Residence Life Workshops
- d. Alcohol, Drug, and Sexual Assault Prevention
- e. Bystander Intervention Training
- f. Title IX Workshops

C. Judicial/ Adjudication Proceedings

The University strictly prohibits all acts of gender-based misconduct crimes including sexual assault, domestic violence, dating violence, and stalking. In addition to facing criminal action, students, employees and other affiliates may also face disciplinary action by the University. Individuals found responsible for having committed such a violation may face permanent expulsion, termination of employment, suspension, or probation. The Office of Judicial Services will handle incidents involving accused students.

All judicial proceedings, whether the conduct is reported to have occurred on or off campus, shall provide a prompt, fair and impartial investigation and resolution by officials who have received annual training on how to conduct an investigation, and conduct a hearing in a manner that protects the safety of victims and promotes accountability. The Vice President for Student Affairs and the Judicial Conduct Board will make the determination of responsibility for students. Some examples of the interim measures they can be put into place are as followed: no contact order, class changes, rescheduling assignments and examinations, housing assignment change, ability to drop courses after normal dates and providing an escort to walk with reporting party around campus.

In all proceedings, including any related meetings, both the complaint and respondent are entitled to the same opportunities to have others present including the right to be accompanied by an advisor of their choice. Both the student respondent and the complainant shall simultaneously be informed in writing of the outcome made by the Vice President of Student Affairs and the Office of Judicial Services. Disclosure of the outcome shall be made to both parties unconditionally, and each shall be free to share or not share the details with any third parties.

Sanctions for a finding of responsibility include, but are not limited to, expulsion, suspension, disciplinary probation, recommended counseling, and/or other educational sanctions. The Judicial Conduct Board has complete discretion regarding sanctioning. In determining appropriate sanction(s) for a violation of this policy, the hearing body will first consider whether expulsion (permanent removal) from the University is appropriate. While expulsion is the starting point for consideration, the Judicial Conduct Board has discretion to decide that different sanctions are appropriate. Factors that are pertinent to the determination of what sanctions applies include, but are not limited to, the nature of the conduct at issue, prior

disciplinary history of the respondent (shared with a panel only upon a finding of responsibility to the allegation), respondent's willingness to accept responsibility for his/her actions, previous University response to similar conduct and University interests.

SANCTIONS LISTED ARE NOT INCLUSIVE OF ALL SANCTIONS THAT CAN BE IMPOSED

Violations may result in policy education, **Dismissal from the University, Expulsion and/or Criminal Charges, Suspension from the University for a term no less than one semester, Fine, Loss of Housing, Counseling and Community Service, Probation or a combination thereof**

Timing

The Title IX Coordinator will notify Judicial Services (*Judicial Services will also notify Title IX if they are made aware of any cases before the Title IX Coordinator) of gender misconduct incidents. The Title IX Coordinator will conduct an investigation, which may take up to 60 days to complete, and provide results of the investigation to the Judicial Affairs committee for review and appropriate action. After receipt of information, if appropriate a hearing will be held within 5-10 business days after close of Title IX investigation. It need not take longer unless exigencies or the investigation require delay. The longer you have a potentially dangerous student at-large on campus, the greater your institutional vulnerability if another student is assaulted. A finding should be reached by the board within 48 hours (2 business days) of the conclusion of the hearing. Again, the victim should be made aware of when the accused is informed of the outcome and the sanction, because of the possibility of retaliation.

Appeals

After a decision has been made by an initial hearing body, a student can choose to accept the decision or a student can file an appeal of the decision. An appeal request should be written by the student that was found responsible. The request should be submitted to the Judicial Office via the electronic link found in the decision letter sent to the student after the conduct hearing. A request for an appeal must be completed within 120 hours from the time the decision letter was sent.

Grounds for Appeals

A decision or judgment of the judicial court may be appealed on the following grounds:

1. Prejudicial error was committed during hearing whereby a fair trial was not given.
2. Non-cumulative material and relevant evidence, new and newly discovered, which with reasonable diligence, could not have been produced at the hearing.
3. The decision or judgment is not supported/ not justified by the evidence.
4. The penalty or sanction imposed was excessive.

Key points relative to complaints of gender-based misconduct in the University's process include:

1. The victim is identified as the complainant. The accused is identified as the respondent.
2. Mediation between the parties is **not** appropriate in gender-based misconduct cases.
3. If the respondent accepts responsibility for violation of the Student Code, the hearing officer will issue the appropriate sanction and no hearing will be held before the Judicial Conduct Board.
4. The standard for determining responsibility is the preponderance of the evidence (i.e. more likely than not).
5. The Judicial Conduct Board members have been trained for their responsibility, including training for adjudication of gender-based misconduct complaints. Either the complainant or the respondent may object to any member of the Board based on bias.
6. All rights throughout the process, including notice of hearing, opportunity to present witnesses or other relevant evidence, having an advisor present, etc. are provided equally to both the complainant and respondent.
7. Questions for either party may only be asked by members of the Judicial Conduct Board. Cross examination of a party by a party is not permitted. Either party may submit a question for consideration to the Judicial Conduct Board. There will be no questions about the complainant's prior sexual conduct with anyone other than the respondent.
8. Evidence of a prior consensual relationship between the parties does not by itself imply consent or preclude a finding of responsibility for gender-based misconduct.
9. Upon request of the complainant or the respondent, arrangements will be made to allow the hearing to continue without both parties present in the same room. The use of closed circuit TV or similar technology may be used.
10. If the respondent is found to be responsible for gender-based misconduct, the extent of the misconduct, as well as the respondent's prior disciplinary history if any, will determine the resulting sanction. The sanction imposed will range from University Suspension to University Expulsion.

Under the *Good Samaritan Practice, the University will not pursue disciplinary action for drug or alcohol violations, or most other violations of the Code of Student Conduct, against a victim or witness who comes forward in good faith to report sexual misconduct or harassment. While violations cannot always be completely overlooked, the University will provide educational options rather than punishment, in such cases. This limited immunity does not extend to the perpetrator(s) of the gender-based misconduct or harassment, crimes of violence, or other serious criminal behavior.

For additional information regarding student conduct proceedings, please consult the Student Handbook concerning Student rights and steps in the judicial process or available copies of the policy are located in Student Affairs offices. For additional information about employee conduct proceedings please consult the following: **(See Handbook of Student Discipline and the Judicial Process for additional information**http://www.shawu.edu/uploadedFiles/Students/docs/StudentDiscipline_JudicialProcessHandbook.pdf

References

- VI. *National Institute of Justice & Centers for Disease Control & Prevention. (1998). *Prevalence, Incidence and Consequences of Violence Against Women Survey*.
- VII. **Rape, Abuse, & Incest National Network (RAINN).
- VIII. ***Fisher, B.S., Cullen, F.T., & Turner, M.G. (2000). The sexual victimization of college women. NCJRS Publication No. 182369. Washington, DC: U.S. Department of Justice, National Criminal Justice Reference Service.
- IX. ****National Center for Victims of Crime (NCVC). (2008). *Acquaintance rape*.