SEXUAL MISCONDUCT

A. Sexual Assault Policy Statement (2012-13 Student Handbook pp. 54-61)

N.C. A&T will not tolerate affronts to basic human dignity in any form. Rape, sexual offenses and sexual assault, in general, represent such affronts. Moreover, these activities represent criminal violations of law, and allegations of such activities by students or employees of the university will be investigated fully. Individuals affiliated with the university, who are found guilty of committing these prohibited acts at locations on- or off-campus, will be subject to all available courses of disciplinary action, in addition to any and all penalties for violating state law.

The penalty for first-degree sexual offense and first-degree rape may be life imprisonment. For offenses in the second degree, the maximum penalty is 20 years imprisonment.

In North Carolina, rape is legally defined in the first and second degrees (N.C.G.S. 14-27.2 through 14-27.3). A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

1. With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or
2. With another person by force and against the other person’s will; and
   a) Employs or displays a dangerous or deadly weapon, or an article which the other person reasonably believes to be a dangerous or deadly weapon;
   b) Inflicts serous personal injury upon the victim or another person; or
   c) Commits the offense aided and abetted by one or more other persons.

Any person who commits an offense defined in this section is guilty of a Class B1 felony.

A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:
a) By force and against the will of the other person; or
b) Who is mentally disabled, mentally incapacitated, or physically helpless and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

Any person who commits the offense defined in this section is guilty of a Class C felony.

Actual emission of semen is not required to constitute vaginal intercourse. Rape is defined as sexual penetration, no matter how slight.

Statutory rape also occurs:

a) If the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

b) If the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four years but less than six years older than the person, except when the defendant is lawfully married to the person.

Each of these offenses is a felony.

The “force” necessary to convict for rape may be other than physical. It may be “constructive force,” such as fear, fright or coercion. Those who aid or abet a rape may be equally guilty of the crime. Forced sexual intercourse with a person who is physically helpless, as from overuse of alcohol, drugs, or chemicals, constitutes rape under North Carolina law.

“Acquaintance rape” and “date rape” are terms commonly used to describe forced intercourse by a person on another who he/she knows. However, a social relationship with an individual does not make “forced” sexual activity legal.

A sexual offense is a forced sexual act by a person of either gender where the act is against the will of the victim (N.C.G.S. 14-27.4 through 14-27.10). This crime may not involve intercourse, but does involve other sexual acts.
Sexual offenses/assaults include rape, attempted rape, corruption of a minor, sexual battery, attempted sexual battery, and public indecency. Sexual battery is defined as intentionally touching the victim’s intimate parts (primary genital area, including but not limited to the groin, inner thigh, buttock, or breast) without or against the victim’s consent. This touching is either directly on the body or on the clothing covering that body part. It is also sexual battery if the victim is forced to touch the intimate parts of the perpetrator.

Sexual assault occurs when the act is intentional and is committed either by a) physical force, violence, threat or intimidation; b) ignoring the objections of another person; c) causing another’s intoxication or impairment through the use of drugs, chemicals, or alcohol; or d) taking advantage of another person’s incapacitation, state of intimidation, helplessness, or other inability to consent.

The university supports the idea that all students and employees must be able to learn and work in an environment free of rape and sexual offenses (including assault and battery). Sexual assault is broadly defined to include oral, anal or vaginal penetration or touching of an unwilling party by any body part or object. This includes parties who are physically helpless, such as unconscious, asleep, unable to communicate their unwillingness, or to whom alcohol, narcotics, other drug, or chemical has/have been administered, rendering the person unable to give consent. Sexual assault does not include procedures done for bona fide medical purposes.

Moreover, the university views rape and sexual offenses/assault/battery as an extremely serious matter and will respond in accordance with the guidelines established herein and in policies for faculty and staff members. In each case, the potential for subsequent harm to the victim or community at large weigh heavily in sanctions for violators. University policies include sanctions as serious as expulsion.

1. **Expulsion** permanently severs the relationship of the student with the University.
2. **Indefinite suspension** severs the relationship of the student with the university with no date established for the student to return.
3. **Interim suspension** calls for the immediate removal of a student from the university when there is reasonable cause to believe that the alleged
misconduct is of such a serious nature that his or her continued presence at the university is dangerous to the health and safety of the university community, its property or the educational mission.

4. **Suspension** severs the relationship of the student with the university for a finite period, the terminal date of which coincides with the official ending of an academic semester or summer session.

5. **Probation** is a period of close scrutiny of a student by the university during which his or her conduct is under review.

6. **Warning** is an official reprimand, which by formal written communication, gives official notice to a student that any subsequent offense against the student conducts regulations will likely result in more serious consequences.

7. In addition to the above, any one or a combination of the following may be recommended by a judicial hearing board and/or imposed by the vice chancellor for student affairs or the dean of students.

   (a) Requirement of participation in community service
   (b) Restitution where applicable
   (c) Exclusion from university residence halls or houses
   (d) Official notice that conviction of any other violation of the **Student Conduct Regulations** could result in suspension from the university
   (e) Prohibited from participating in organized groups or activities, and,
   (f) Counseling if necessary

**Complaint Procedure**

These procedures cover cases involving sexual misconduct by student on student and students against non-students committed on university-owned property or university-leased property; at any university sanctioned function; or at the temporary or permanent local residence of a university student, faculty member, employee, or visitor.

**Limited expansion of off-campus jurisdiction**: The university reserves the right to consider the behavior of students off campus when it is determined that the off-campus behavior interferes with the University and its educational mission.

Any student who has been raped, sexually assaulted/battered, or been the victim of a sexual offense, may seek redress through the campus student judicial system if the accused is also an enrolled student at the university. (Note: Cases involving faculty/staff rape or sexual assault/battery/offense against a student are to be reported to the Director of Human Resources, the Affirmative Action Officer in Academic Affairs, or the University Police or Greensboro Police.)
Such redress may be in conjunction with or in place of pressing charges with criminal authorities or filing civil actions. Once the report is made and forwarded to the vice chancellor for student affairs, an investigation will be initiated. If the incident poses a significant threat to the campus community, an investigation will ensue without the consent of the victim.

Any student, faculty or staff member who believes he/she has been the victim of rape, sexual assault/battery or other sexual offense is encouraged to call the University Police Department (UPD) (336-334-7675). To assist victims of such violent, aggressive and hostile crimes, the police department requests that you do the following:

- In the call to the Police Department give as much detail as possible concerning your location, injuries and suspect information;
- Remain dressed in the same clothing. Important evidence linking the suspect to the crime can be found on clothing;
- Do not bathe or destroy any evidence;
- Seek medical treatment for your own protection and the collection of evidence; and
- Secure the area (dormitory room, vehicle, office, etc.), when possible, and do not let anyone interfere with evidence.

Rape and sexual assault can be physically and emotionally damaging; thus, university police have the victim's well-being as a primary concern and have been trained to treat the victim with respect, dignity and sensitivity. Counseling and Student Health Services professionals are available to help victims of sexual assault. These departments are especially well-prepared to assist individuals with their medical and/or emotional needs.

Sexual assault victims also have the option of calling the Greensboro Police Department (GPD) (373-1000). When filing a formal report with the GPD, the UPD should also be notified regarding the incident. University police cooperate fully with the GPD in the investigation of campus crimes and, therefore, will be very resourceful in the search for suspects in the campus setting. University police work in close coordination with the Division of Student Affairs and Counseling Services to provide assistance to victims of sexual assault.
At the student-victim’s request, he/she will be assisted by campus authorities in notifying law enforcement authorities.

Any campus official receiving a complaint about rape or sexual assault, with reason to believe a criminal offense has occurred, shall notify the UPD for necessary documentation and follow-up. Also, reports of rape or sexual assault made directly to the UPD will be coordinated with appropriate departments and administrators for action. However, the victim’s identity and other information concerning the offense will be held in strict confidence by authorities. Information regarding the name or address of a victim will not be communicated, broadcast, printed, or published by the university without the consent of the victim, except as required in connection with a police investigation or by direction of a lawful court order.

A student-victim may seek assistance in changing academic and living situations after an alleged rape or sexual assault/battery/offense, if such changes are reasonably available.

**PROCEDURES FOR ON-CAMPUS DISCIPLINARY ACTION IN CASES OF ALLEGED STUDENT TO STUDENT SEXUAL ASSAULT**

N.C. A&T adheres to the Campus Sexual Assault Victim’s Bill of Rights, which is a part of the Higher Education Amendments of 1992, as outlined below:

1. The accuser and accused must have the same opportunity to have others present at campus judicial hearings;
2. Both parties shall be simultaneously informed of the outcome of a disciplinary proceeding;

   **NOTE:** Compliance with this statement does not constitute a violation of FERPA. For purposes of this sentence, the outcome of a disciplinary proceeding means only the institution’s final determination, with respect to an alleged offense and any sanction imposed against the accused.

Furthermore, if the accused is found guilty, the victim has the right to make a “victim impact statement” and to suggest an appropriate penalty.
A student enrolled in N.C. A&T, who is accused of rape or sexual assault/battery/offense, will be afforded procedural due process in adjudication of his/her case. This includes the right to presumption of innocent until proven guilty and the privilege against self-incrimination, notice of the allegations, and an opportunity to be heard. However, immediate suspension (prior to a hearing) of the accused will occur if the vice chancellor for student affairs concludes that the continued presence of the accused person at the university constitutes clear and present danger to the health or welfare of other members of the university community.

A conduct hearing will then be scheduled by the Office of the Dean of Students as expeditiously as possible.

**GUIDELINES REGARDING DISCIPLINARY PROCEDURES FOR SEXUAL ASSAULT**
Disciplinary proceedings (in compliance with 20 U.S.C. 1094(a)(26)

*Victims are entitled to know about the results of proceedings involving alleged crimes of violence or non-forcible sex offenses when they request this information, in writing, from the university as defined by FERPA. Both the accused and accuser, upon written request, will be notified, in writing, of the results of a hearing involving alleged crimes of violence or non-forcible sex offenses. Victims of an alleged sexual assault will be provided with notification, in writing, of the final outcome of a disciplinary hearing against the alleged perpetrator, as required by the Campus Security Act (4/10).*

1. A student accused of sexual misconduct will receive notice of a complaint and a copy of the complainant’s written statement, if any, no less than ten days before scheduled to go before an administrative hearing panel;
2. The accused student will be advised that he/she is presumed innocent and is expected to cooperate in an investigation of the complaint;
3. Prior sexual history of either party is not admissible in a hearing, except testimony submitted by a party concerning he/her own sexual history. In addition, prior sexual history cannot be used for finding of responsibility; however, prior sexual history may be used in sanctioning;
4. Hearing procedures and sanctions are fully described in the student conduct section of the student handbook. The severity of an offense and the
potential for subsequent harm to a victim/survivor, or the community at-large, weigh heavily in sanctioning actions taken in such cases.

5. A victim’s/survivor’s identity and all information surrounding a case are held in strict confidence by all hearing authorities and service providers under the guidelines of FERPA; however, the university cannot guarantee confidentiality.

B. Sexual Harassment Policy Statement
The policy of N.C. A&T is that all employees and students, shall be free from sexual harassment from any university employee or fellow student in connection with any university relationship or activity. No academic or personnel decision will be made on the basis of granting or denying sexual favors. All employees and students are guaranteed the right to work and/or study in an environment free from sexual harassment. (Student Handbook, pg. 61)

(Below is the policy in effect at the time of printing of this Handbook. If the Sexual Harassment Policy is amended after the Handbook printing, the sexual harassment policy in effect at the time of the last alleged violation shall be used (Student Handbook pp. 140-145)

All employees and students shall be free from sexual harassment from any university employee, student or contractor in connection with any relationship or activity. No academic or personnel decision(s) shall be made on the basis of granting or denying sexual favors. All employees and students have the right to work and/or study in an environment free from sexual harassment.

The university shall take steps to assure that all students and employees are aware of the policy and that sexual harassment will not be condoned; it will be met with swift and appropriate discipline. Furthermore, all employees and students will be made aware of their right to raise the issue of harassment, free from retaliation or reprisal and of procedures for filing a complaint.

Definitions
Sexual harassment is defined as deliberate, unsolicited and unwelcome verbal, non-verbal and/or physical conduct of a sexual nature:
• Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment, academic or student status; or

• Submission to or rejection of such conduct by an individual is used as the basis for employment, academic or other institutional decision(s) affecting said individual; or

• Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance, academic activities or student experience or of creating an intimidating, hostile or offensive working, academic or student life environment.

1. **Grievance and Administrative Procedures**

Employees designated to coordinate the university’s compliance with regard to sexual harassment are the affirmative action officer and the vice chancellor for human resources. Employees or students with a concern about sexual harassment may contact either individual to discuss options for handling the situation, including filing a complaint. Employees or students may also contact their department head or other appropriate university administrator for assistance. Supervisors or university administrators must promptly contact the affirmative action officer when notified of a concern involving sexual harassment using the information below:

Sylvia C. Anderson  
Director of Employee Relations/Affirmative Action Officer  
Division of Human Resources  
1020 East Wendover Avenue  
Greensboro, NC 27411  
(336) 334-7862

The affirmative action officer is responsible for receiving and processing any and all complaints of alleged sexual harassment. Any member of the university community including, but not limited to, prospective students, employees, prospective employees, and persons entitled to the services of the university may file a complaint. Complaints may be formal or informal, and may be made known either orally or in writing. Informal complaints may be made orally to the affirmative action officer, whereas
formal complaints shall be filed on the sexual harassment complaint form available from the Division of Human Resources or the Web site at http://www.ncat.edu/hr/.

SPA employees may choose to file a grievance either under the Unlawful Workplace Harassment Policy or the SPA Mediation and Grievance Policy and Procedure (both can be found at http://www.ncat.edu/hr/ then clicking Employee Relations) or proceed under the internal sexual harassment complaint procedure. Use of the Workplace Harassment Prevention Policy is a required procedure for SPA complainants who want to maintain their appeal rights to the State Personnel Commission. To use this procedure, SPA employees must submit a written complaint to Human Resources within 30 calendar days of the alleged harassment.

Alternatively, all of the above listed policies allow an employee who chooses to bypass the university’s internal procedures to appeal directly to the Office of Administration Hearings within 30 days’ notice of the alleged discriminatory action.

All employees and students retain the option of taking a complaint directly to the Equal Employment Opportunity Commission.

Investigation of Sexual Harassment Complaints
The affirmative action officer has five business days in which to resolve a complaint informally through confidential discussion. Should facts warrant, the affirmative action officer may extend the time for informal resolution for five business days by notifying all parties.

If, at the end of five business days (or ten business days in the case of extension), the affirmative action officer has been unable to reach an informal resolution of the complaint, the complainant shall have the option of filing a formal complaint with the Affirmative Action Committee.

Depending on the circumstances, and even when concerns have been raised through the informal process, the university may initiate a formal complaint into concerns involving alleged harassment in the absence of a written complaint.
2. **Process**

   a. **Internal Grievance Procedures**

   The complainant shall complete a sexual harassment complaint form and submit it, signed, to the Division of Human Resources. The form can be obtained from Human Resources at the number listed in the policy. A written complaint should detail the nature of the complaint and the person(s) against whom the grievance is directed. Formal complaints must be filed within 30 calendar days of the alleged harassment. Occasionally, extenuating circumstances may exist that delay a complainant from bringing forth a complaint within 30 calendar days; reasons for such a delay in reporting must be shared with the affirmative action officer who, at his/her sole discretion, may extend the time limit.

   The affirmative action officer shall forward the complaint, in three business days, to the Affirmative Action Committee for recommended action.

   b. **Affirmative Action Committee**

   The Affirmative Action Committee is authorized to review, investigate and advise, with respect to the adjustment of complaints related to sexual harassment filed by any member of the university community. Committee members and the chair are appointed by the chancellor and shall be broadly representative of the university community.

   The Affirmative Action Committee is authorized to meet with the complainant, accused and any witnesses in order to determine the facts regarding an allegation. Meetings with parties to the complaint should be conducted individually and should not take the form of a hearing. These meetings may be done by the committee as a whole or by members designated by the chair.

   An accurate record of all meetings and interviews shall be made by the secretary of the committee. Records shall be made available, under supervision of the affirmative action officer, to all
parties to the complaint and maintained for a minimum of three years or for as long as any of the parties are associated with the university.

The Affirmative Action Committee shall complete its review within 30 days of receiving the complaint. Upon completion of its review, the committee shall make a report to the vice chancellor administratively responsible for the accused in five business days. The report shall consist of a summary of findings, including a statement of the charges and evidence presented, recommendation of the committee, and reasons therefore.

In the event the Affirmative Action Committee determines that discriminatory conduct, in the form of sexual harassment, has taken place, it will be the responsibility of the committee to make recommendations to the vice chancellor for appropriate redress for the complainant and disciplinary action for the offenders. Contingent upon the nature of the offense, remedial action may range from a formal reprimand to termination of employment or expulsion. Recommendations shall be included in the committee’s report to the vice chancellor, who shall have authority for implementing recommendations for remedial action.

**Vice Chancellor’s Decision**

Final authority for implementation of a recommendation for corrective action is made by the vice chancellor for human resources. He/she may accept, reject or modify the decision of the Affirmative Action Committee. The vice chancellor has 15 calendar days in which to decide the matter. Parties will be mailed notice of the vice chancellor’s decision within 20 calendar days following receipt of the report. The decision of the vice chancellor is the final step in the informal complaint review process. The vice chancellor issues the final decision in a formal complaint.

c. **Appeal**

A complainant who is dissatisfied with the decision of the vice chancellor may file a grievance under the appropriate procedure,
provided the filing is done in accordance with time frames established in the relevant procedure. The time period for filing a grievance under the appropriate procedure begins to run upon the complainant’s receipt of written notice of the final decision. A record of the Affirmative Action Committee’s review and recommendation(s), and the decision of the respective vice chancellor become part of any such grievance.