

Resolution 2012-6. On Amending the Instrument of Student Judicial Governance to Remove Sexual Misconduct, Harassment and Intimidation, and Discrimination Cases from the Jurisdiction of the Honor System

The Faculty Council consents to the following amendments to the Instrument of Student Judicial Governance:

Section 1. Delete Sections II.C.1.b and II.C.1.e. in their entirety. Revise Section II.C.1.c. as set forth below. Re-letter the remaining provisions as appropriate.

C. Student Conduct Adversely Affecting Members of University Community or the University.

It shall be the responsibility of every student enrolled at the University of North Carolina to refrain from conduct that impairs or may impair the right of all members of the University community to learn and thrive in a safe and respectful environment; or the capacity of University and associated personnel to perform their duties, manage resources, protect the safety and welfare of members of the University community, and maintain the integrity of the University. To these ends, no student or student group shall engage in conduct, or assist another in conduct, that adversely affects or creates a substantial risk of adversely affecting University interests including but not limited to the following:

1. Conduct Affecting Persons.

a. Fighting or other conduct that unreasonably endangers or inflicts physical injury upon another.

~~b. Sexual misconduct that involves:~~

- ~~i. Deliberate touching of another's sexual parts without consent;~~
- ~~ii. Deliberate sexual invasion of another without consent;~~
- ~~iii. Deliberate constraint or incapacitation of another, without that person's knowledge or consent, so as to put another at substantially increased risk of sexual injury; or~~
- ~~iv. Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that expressly or implicitly imposes conditions upon, threatens, interferes with, or creates an intimidating, hostile, or demeaning environment for an individual's (I) academic pursuits, (II) University employment, (III) participation in activities sponsored by the University or organizations or groups related to the University, or (IV) opportunities to benefit from other aspects of University life.~~

~~c. Harassment or intimidation~~ Disruptive or intimidating behavior that willfully abuses, disparages, or otherwise interferes with another (other than on the basis of the protected classifications identified and addressed in the University's Policy on Prohibited Harassment and Discrimination) so as to adversely affect their academic pursuits, opportunities for University employment, participation in University-sponsored extracurricular activities, or opportunities to benefit from other aspects of University life.

d. Threats that involve violation of restraining orders or no-contact orders imposed by government or campus authorities, stalking, or other activities that create a reasonable apprehension of physical or emotional harm to an individual following a request or order to desist.

~~e. Discrimination on the basis of race, ethnicity, national origin, religion, creed, sexual orientation, gender expression, age, or disability that impairs or may impair an individual's University working conditions, privileges or opportunities for University employment, educational opportunities, participation in University-sponsored extracurricular activities, or opportunities to benefit from other aspects of University life.~~

Section 2. Delete Section III.D.3.a. in its entirety. Re-letter remaining provisions of Section III.D.3. as appropriate.

3. Conduct Adversely Affecting Persons.

- a. ~~For deliberate sexual invasion of another, the minimum sanction shall be suspension for two full academic semesters.~~
- b. For illegally possessing, manufacturing, selling, or delivering a controlled substance as defined by state or federal law, sanctions established by relevant policies of the Board of Trustees, including as specified, drug probation, suspension, or expulsion, depending upon the gravity of the offense and prior history of misconduct.
- c. For operating a motor vehicle while impaired by alcohol, drugs, or other substances,
 - i. The usual sanction shall be drug or alcohol suspension for at least one full academic semester.
 - ii. The minimum sanction shall be probation for at least one full academic semester

Section 3. Delete Section IV.B.5.b. in its entirety. Re-letter the remaining provisions of Section IV.B.5. as appropriate.

5. Additional Rights in Certain Cases. In certain types of cases, the complainant shall have additional rights as stated below.

a. **Academic Dishonesty.** The right of an instructor to recommend a failing grade (as to a particular assignment, course component or aspect, or the course as a whole), and to have the recommended penalty imposed in the event that the accused student is found guilty as charged.

~~b. **Sexual Misconduct.** In offenses involving sexual misconduct (Section II.C.1.b.):~~

~~i. With the approval of the Student Attorney General and the Judicial Programs Officer, the right to request a student investigator of his or her own choosing from within those available in the Student Attorney General's office after charges have been filed;~~

~~ii. The right to be present during court proceedings except court deliberations, and to have a support person present during the original hearing, any evidentiary proceeding or any appeal;~~

~~iii. In cases involving sexual invasion (Section II.C.1.b.ii.), the right to a closed hearing when requested in writing (notwithstanding any request to the contrary by the accused student) and to refuse to testify without being charged with a violation based on that refusal upon a determination by the Student Attorney General after consultation with the Vice Chancellor for Student Affairs that compelling circumstances prevent the complainant from participating in the case;~~

~~iv. The right for evidence of other sexual behavior to be deemed inadmissible in a hearing except as provided in Appendix C.~~

c. **Other Conduct Involving Injuries to Persons.** In offenses involving other forms of conduct resulting in injuries to persons under Section II.C.1., the right to be present, except for any court deliberations (during an original hearing, evidentiary proceeding, or appellate proceeding), to the extent permissible under pertinent state and federal law.

Section 4. Delete Section D.2., Appendix C in its entirety.

D. Procedural Protections

1. General Protections. Students charged with Honor Code violations and complainants alleging such violations shall be afforded the detailed procedural rights set forth in Section IV of this Instrument.

2. Evidence in Cases Involving Sexual Invasion (Section II.C.2.b.ii of the Instrument)

~~a. **Limited Admissibility.** In cases involving offenses under Section II.C.2.b.ii. of this *Instrument*, the following rules of evidence will apply with regard to "sexual behavior," including sexual activity of the complainant other than the sexual act on which the charge is based. Evidence of the sexual behavior of the complainant of a sexual assault, when offered by the student charged, is inadmissible in the hearing on the charge unless such behavior was between the complainant and the accused, is evidence of specific instances of sexual behavior offered for the purpose of showing that the act or acts charged were not committed by the accused, is evidence of an occurrence or occurrences of sexual behavior so distinctive and so closely resembling the accused student's version of the~~

~~alleged encounter with the complainant as to tend to prove that the complainant consented to the act or acts charged, or is evidence of sexual behavior offered as the basis of expert psychological or psychiatric opinion that the complainant fantasized or invented the act or acts charged. Sexual behavior otherwise admissible under this section may only be proved by evidence of specific acts and may not be proved by reputation or opinion. Until a determination is made under this section that specific evidence is admissible, no reference to the complainant's alleged behavior shall be made in the presence of the court and no evidence of this behavior shall be introduced at any time during the hearing.~~

~~**b. Determination of Admissibility.** Prior to the time the case is set for hearing, the person seeking to introduce such evidence shall apply to the Judicial Programs Officer for a determination of its admissibility. The Judicial Programs Officer shall convene a three-person University Hearings Board panel composed of one faculty member, one student from the court having authority to hear the matter, and one administrator designated by the Vice Chancellor for Student Affairs, to consider evidence and arguments of the student charged and the investigator acting on behalf of the appropriate Student Attorney General. Procedures shall apply and a record of the hearing shall be made in accordance with Section E.2.-E.6. of Appendix C. The person seeking to introduce the evidence must establish the basis for its admissibility. The University Hearings Board panel shall determine the admissibility of the evidence and state in writing its findings, setting out the specific purpose for which the evidence is admissible and the reasons supporting the finding. Its determination on the admissibility of the evidence shall be conclusive and no separate appeal of the admissibility finding shall be allowed. The court in the full proceeding on the charge of sexual invasion must, however, determine the probative value and weight of the evidence, including the credibility of witnesses, as in the case of any other evidence. A finding of admissibility of such evidence may be reviewed only in an appeal of a determination of a court rendering a final judgment on the merits of the charge of sexual invasion under Section II.C.2.b.ii. of this *Instrument*.~~

1. Conduct Affecting Persons.

a. Fighting or other conduct that unreasonably endangers or inflicts physical injury upon another.

~~b. Sexual misconduct that involves:~~

- ~~i. Deliberate touching of another's sexual parts without consent;~~
- ~~ii. Deliberate sexual invasion of another without consent;~~
- ~~iii. Deliberate constraint or incapacitation of another, without that person's knowledge or consent, so as to put another at substantially increased risk of sexual injury; or~~
- ~~iv. Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that expressly or implicitly imposes conditions upon, threatens, interferes with, or creates an intimidating, hostile, or demeaning environment for an individual's (I) academic pursuits, (II) University employment, (III) participation in activities sponsored by the University or organizations or groups related to the University, or (IV) opportunities to benefit from other aspects of University life.~~

~~c. Harassment or intimidation Disruptive or intimidating behavior that willfully abuses, disparages, or otherwise interferes with another (other than on the basis of the protected classifications identified and addressed in the University's Policy on Prohibited Harassment and Discrimination) so as to adversely affect their academic pursuits, opportunities for University employment, participation in University-sponsored extracurricular activities, or opportunities to benefit from other aspects of University life.~~

Section 5. These amendments become effective August 1, 2012.