



# LEGAL ISSUES: What Every Faculty Member Needs to Know

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C.T.E. PRESENTATION  
2/23/05

The materials presented are for informational purposes only and  
should not be construed as legal advice.



# Legal Affairs at UNCW

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- Eileen Goldgeier, General Counsel (ext. 4027)
- Robert Hoon, Associate General Counsel (ext. 7886)
- Sarah Paschall, Paralegal (ext. 7238)
- Offices located in Alderman Hall



# FACULTY LEGAL ISSUES

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1. Harassment in the Academic Setting
2. Reasonable Accommodations for Students with Disabilities
3. FERPA and Confidentiality of Student Records
4. Can You be Sued?



# HARASSMENT IN THE ACADEMIC SETTING

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## Types of Harassment

Quid Pro Quo – “this for that”; when specific employment or academic benefits are promised or withheld as a means of coercing sexual favors.



## Types of Harassment

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Hostile Environment – Unwelcome conduct based on race, color, religion, national origin, age, sex, sexual orientation or disability which is sufficiently pervasive or severe as to create an offensive or intimidating work/learning environment or unreasonably interferes with an individual's work/learning performance.



# AMERICANS WITH DISABILITIES ACT

## Section 504 of the Rehabilitation Act

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No otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.



# Reasonable Accommodations & Modifications

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- Make modifications so as not to discriminate against those with disabilities
- This requirement does not obligate the institution to waive course or other academic requirements
- Essential academic requirements that can be demonstrated by the recipient need not be changed



# Information & Resources

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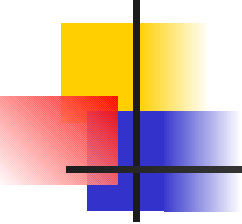
If you have any questions regarding your obligation to provide a reasonable accommodation to a particular student, contact:

Peggy Turner, Director

Disability Services

Ph: 962-3746

[www.uncw.edu/stuaff/SDS/disability.html](http://www.uncw.edu/stuaff/SDS/disability.html)



# Family Educational Rights and Privacy Act (“FERPA” or “Buckley Amendment”)

FERPA applies to **all records** directly related to a student and maintained by UNCW, EXCEPT certain medical, employment and law enforcement records



# Student Rights in FERPA

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- ✓ May inspect or copy their own records
- ✓ May amend or contest accuracy of their records

But may NOT see financial records of their parents



# Who else can see student records?

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- ❖ Anyone with **written consent** from the student, including:
  - which records may be disclosed
  - to whom
  - the purpose of the disclosure



# Who else can see student records?

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- ❖ School officials who have a legitimate educational interest
- ❖ Anyone determining financial aid
- ❖ Parents of a dependent student
- ❖ Health and safety emergencies
- ❖ Anyone with a judicial order or subpoena
  - but student must be notified first
  - unless it is a law enforcement subpoena that says not to notify
  - unless it is in accordance with USA Patriot Act

# Directory Information

Some student records are open to the world unless the student has a privacy block filed with the Registrar

- Name
- Address
- Enrollment status
- Telephone number
- College/School
- Major
- Student activities
- Weight & height of athletes
- Dates of attendance
- Degrees and awards
- Most recent previous educational agency or institution attended by the student

# SPECIFIC FERPA ISSUES FOR FACULTY



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You cannot post grades by the student's name, social security number, student id number or any portion of it



# OTHER ISSUES FOR FACULTY

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Electronic posting of students' course work or papers does not require consent, if 1) the records do not contain professor's comments or grades; 2) the students post the papers; 3) students are notified prior to or at the time of enrollment that posting of their work is a course requirement; and 4) the posted work is available only to members of the class.



# Personal Notes

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Faculty and other administrators may keep personal notes concerning students, and these notes will not be considered “educational records” under FERPA provided that: 1) they are kept by the official and are not disclosed to others except for a temporary substitute; and 2) they are used as a personal memory aid.



# N.C. TORT CLAIM ACT

## General Statute 143-291

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- State agencies, and employees and agents acting in their official capacity, may be sued for torts, BUT ONLY
  - For ordinary negligence
  - Caused by the state employee or agent
  - Acting within the scope of authorized service



# WHAT IS A TORT?

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- A WRONG OR INJURY TO ANOTHER,
- APART FROM BREACH OF CONTRACT,
- WHICH A COURT CAN REMEDY BY AWARDING DAMAGES

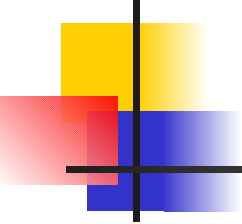
# DEFENSE OF STATE

## EMPLOYEES ACT

General Statute 143-300.3 et seq.

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- THE STATE MAY DEFEND EMPLOYEES AND AGENTS IN LAWSUITS BROUGHT AGAINST THEM PERSONALLY FOR ACTS/OMISSIONS IN THE SCOPE AND COURSE OF THEIR AUTHORIZED SERVICE



# DEFENSE OF STATE EMPLOYEES ACT

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- Does NOT cover fraud, corruption or malice
- Defense ONLY IF Attorney General decides it is in the best interest of the State
- State agency pays up to \$500,000 if employee/agent is found liable



# Insurance

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- Study Abroad Insurance (faculty and students)
- Student Internship Insurance
- Excess Liability Insurance (\$10 million)
- Motor Pool Insurance (employee driving a university vehicle on university business)
- Personal Insurance



# LIABILITY WAIVERS/RELEASES

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- A CONTRACT NOT TO SUE
- Courts often refuse to enforce liability waivers
- Use for volunteers and voluntary activity
- Consult the General Counsel's office (AL 110) for specifics

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