



## 02.210 Title IX Grievance Policy

The university promotes a learning, working, and social environment where all members of the campus community interact in a mutually respectful, professional, and fair manner. The university is committed to ensuring a workplace and academic environment free of unlawful discrimination, harassment, and sexual misconduct, as these behaviors may create a risk to health, safety or wellbeing, cause serious emotional distress, loss of productivity and morale, and potential legal risks.

### Authority:

Chancellor

### History

Revised November 8, 2022; Revised August 1, 2022; October 5, 2021; Established August 14, 2020

### Source of Authority:

20 U.S.C. § 1092(f) (also known as The Clery Act) and Title IX

## **Related Links:**

- [Policy 02.205 Unlawful Discrimination, Harassment, and Sexual Misconduct](#)
- [University Police](#)
- [Student Gender-Based/Sexual Misconduct Policy](#)
- [Code of Student Life](#)

## **Responsible Office:**

Vice Chancellor for Student Affairs/Associate Chancellor for Human Resources

## Policy Details:

### I. Purpose

The university promotes a learning, working, and social environment where all members of the campus community interact in a mutually respectful, professional, and fair manner. The university is committed to ensuring a workplace and academic environment free of unlawful discrimination, harassment, and sexual misconduct, as these behaviors may create a risk to health, safety or wellbeing, cause serious emotional distress, loss of productivity and morale, and potential legal risks.

The university treats Complainants and Respondents equitably throughout the proceedings outlined in this Policy. University officials charged with implementing this Policy will objectively evaluate all relevant evidence, both inculpatory and exculpatory, and will not make credibility determinations that are based on a person's status as a Complainant, Respondent, or witness. Respondents are presumed not responsible for any alleged conduct until a determination regarding responsibility is made at the conclusion of the proceedings outlined in this Policy.

This Policy sets forth the rights of university community members and the obligations of the university pursuant to Title IX of the Education Amendments of 1972 and its implementing regulations ("Title IX"). The university's Director of Title IX and Clery Compliance ("the Title IX Coordinator") is charged with ensuring the University's compliance with this Policy and applicable laws. Throughout this Policy, any references to the Title IX Coordinator include the Title IX Coordinator's designee(s).

### II. Scope

- A. The expectations and procedures outlined in this Policy apply to all members of the University community, including faculty, staff, and students.
- B. Only alleged Covered Conduct, as that term is defined in Section III below, will be processed under this Policy. Alleged sexual harassment or interpersonal misconduct that is not Covered Conduct is addressed under the following University Policies:
  - a. If by a University student, the 04.130 Student Gender-Based/Sexual Misconduct Policy or the Code of Student Life;
  - b. If by a faculty or staff member, Policy 02.205 Unlawful Discrimination, Harassment, and Sexual Misconduct or other applicable policies.

### III. Definitions

- A. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- B. **Title IX Coordinator** means the University's Director of Title IX and Clery Compliance or designee(s).

- C. **Covered Conduct** means sexual harassment that occurs within the university's education program or activity and that occurs against a person in the United States.
- D. **Dating Violence** means violence committed against an individual with whom Respondent is or has been in a social relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on a consideration of the following factors: (a) the length of the relationship; (b) the type of relationship; and (c) the frequency of interaction between the individuals involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- E. **Day** (unless otherwise specified) means a business day on which the University is open.
- F. **Domestic Violence** means violence that may constitute a felony or misdemeanor crime of violence against an individual (a) who is a current or former spouse or intimate partner; (b) with whom Respondent shares a child in common; (c) with whom Respondent cohabitates or has cohabitated as a spouse or intimate partner; (d) who is similarly situated as a spouse under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or (e) who is a youth or adult and is protected from that Respondent's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- G. **Education Program or Activity** includes locations, events, or circumstances over which the university exercised substantial control over both Respondent and the context in which the alleged sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the university.
- H. **Formal Complaint** means a document submitted by Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the university investigate the allegation of sexual harassment. A Formal Complaint includes a document or electronic submission (such as by electronic mail or by the online reporting form at <https://uncw.edu/titleix/>) that contains Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.
- I. **Investigator** means an official(s) appointed by the Title IX Coordinator to conduct the investigation of an alleged violation(s) of this Policy.
- J. **Party or Parties** means the Complainant(s) or Respondent(s) either separately or collectively.
- K. **Student** means an individual who has fully participated in university orientation and is enrolled at the institution, in accordance with the Family Educational Rights and Privacy Act (FERPA). Student status is maintained unless an official university withdrawal is submitted.
- L. **Employees** or "faculty and staff" means all SHRA and EHRA employees, including those who are in assignments that are full-time, part-time, probationary, non-career status, adjunct, and temporary.

- M. **Respondent** means an individual who has been alleged to be the perpetrator of conduct that could constitute sexual harassment.
- N. **Sexual Assault** means any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual Assault includes:
- a. the penetration of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without consent;
  - b. the touching of the private body parts of another person for the purpose of sexual gratification without consent;
  - c. sexual intercourse with a person who is under the statutory age of consent; and
  - d. sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- O. **Sexual Harassment** means:
- a. A University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
  - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity; or
  - c. Sexual Assault, Dating Violence, Domestic Violence, or Stalking.
- P. **Stalking** is engaging in a course of conduct (two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties [by any action, method, device, or means] follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property) directed at a specific individual that would cause a reasonable individual (under similar circumstances and with similar identities to the victim) to (a) fear for their safety or the safety of others or (b) suffer substantial emotional distress.
- Q. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to Complainant or Respondent.
- R. **Title IX Advisor** means a person who accompanies a Party and who may be, but is not required to be, an attorney.
- S. **Clear and Convincing Evidence** means the evidence is highly and substantially more likely to be true than untrue. The facts must reach a threshold that supports a contention as highly probable. This can be further quantified as somewhere between 50% certainty and the threshold for proof beyond reasonable doubt.

#### IV. Retaliation Prohibited

- A. No University community member may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
- B. Except as may be permitted to be disclosed pursuant to the Family Educational Rights and Privacy Act and its implementing regulations (FERPA) or as otherwise required by law or to carry out the purposes of Title IX and this Policy, the university will take precautions to keep confidential the identity of:
  - a. any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or submitted a Formal Complaint of Sexual Harassment,
  - b. any Complainant,
  - c. any individual who has been reported to be the perpetrator of sex discrimination,
  - d. any Respondent, and
  - e. any witness.
- C. Complaints alleging retaliation may be submitted to the Title IX Coordinator.

## **V. Confidentiality/Privacy**

- A. Except as may be permitted to be disclosed pursuant to the Family Educational Rights and Privacy Act and its implementing regulations (FERPA) or as otherwise required by law or to carry out the purposes of Title IX and this Policy, the university will take precautions to keep confidential the identity of:
  - a. any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or submitted a Formal Complaint of Sexual Harassment,
  - b. any Complainant,
  - c. any individual who has been reported to be the perpetrator of sex discrimination,
  - d. any Respondent, and
  - e. any witness.

## **VI. Clery Act Requirements**

- A. **Federal Statistical Reporting Requirements:** All university employees, including the confidential resources of the Abrons Student Health Center and CARE, but not professional or pastoral counselors, are required to report non-identifying statistical information about certain crimes, including any alleged sexual misconduct, dating violence, domestic violence, or stalking, as required by state and federal law, and in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. This statistical information is used for compiling the annual UNCW Annual Security Report and by the Office of Title IX and Clery Compliance and University Police for purposes of advising the campus community of any potential safety risks or concerns.
- B. **Federal Timely Warning Requirements:** Individuals should also be aware that university administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The university will make every effort to ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

## VII. Reports

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, to the Title IX Coordinator, or by any other means that results in the Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the Title IX Coordinator's telephone number or electronic mail address, by completing the appropriate report on <https://uncw.edu/titleix/>, or by mailing a report to the office address. It is expected that every University employee will report incidents that implicate this Policy to the Title IX Coordinator.

Any responsible university office or employee receiving notice of gender-based/sexual misconduct is required to file a report with the Director of Title IX and Clery Compliance within one (1) business day of receiving the notice, unless that notice is communicated to an official who can provide professional confidentiality (see Confidential Resources herein). Clery Act crime statistic and timely warning reporting duties must also be observed.

The Title IX Coordinator/Director of Title IX and Clery Compliance is:

Terrell N. Nicholson, J.D.  
Campus Box 5699  
Hoggard Hall 244  
(910) 962-3557  
[nicholsont@uncw.edu](mailto:nicholsont@uncw.edu)

The Deputy Title IX Coordinator is:

Leigh Fickling, J.D., M.Ed. M.S.  
Campus Box 5699  
(910) 962-3557  
[ficklingl@uncw.edu](mailto:ficklingl@uncw.edu)

University officials who have the authority to institute corrective measures on the University's behalf are required to provide to the Title IX Coordinator any and all information they receive concerning alleged Sexual Harassment. University officials are defined as those who have the authority to institute corrective measures on the University's behalf include, and are not limited to the Title IX Coordinator, the Associate Vice Chancellor for Human Resources, and the Associate Vice Chancellor and Dean of Students.

### III. Supportive Measures

#### A. Generally

- a. Supportive Measures are available to Complainant and to Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been submitted. Such measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university's educational environment, or deter sexual harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual no-contact orders between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- b. The university will maintain as confidential any Supportive Measures provided to Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the university to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

#### B. Offering Supportive Measures

- a. When the Title IX Coordinator receives a report of alleged Sexual Harassment, the Title IX Coordinator will promptly contact Complainant to:
  - i. Discuss the availability of Supportive Measures and consider Complainant's wishes with respect to Supportive Measures;
  - ii. Provide Complainant with written information regarding Complainant's rights and options under this Policy and the Supportive Measures available to Complainant;
  - iii. Inform Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint;

- iv. Explain the process for filing a Formal Complaint;
  - v. Explain this Policy in general terms, including the resolution options available following the filing of a Formal Complaint;
  - vi. Seek to determine if Complainant wishes to notify law enforcement authorities, wishes to be assisted in notifying law enforcement authorities, or does not wish to notify law enforcement authorities of the allegation(s); and
  - vii. Inform Complainant that the university will share information only on a need-to-know basis and will strive to protect Complainant's privacy, including the omission of Complainant's identifying information in publicly available records, to the extent permissible by law.
- b. If Complainant submits a Formal Complaint, as discussed in Section X below, the Title IX Coordinator will promptly contact Respondent to:
- i. Discuss the availability of Supportive Measures and consider Respondent's wishes with respect to Supportive Measures;
  - ii. Provide Respondent with written information regarding Respondent's rights and options under this Policy and the Supportive Measures available to Respondent;
  - iii. Inform Respondent of the availability of Supportive Measures;
  - iv. Explain this Policy in general terms, including the resolution options available following the filing of a Formal Complaint; and
  - v. Inform Respondent that the university will share information only on a need-to-know basis and will strive to protect Respondent's privacy, including the omission of the Respondent's identifying information in publicly available records, to the extent permissible by law.

Student complainants and student respondents have additional rights and responsibilities as it relates to the conduct process. Please refer to [04.130 Student Gender-Based/Sexual Misconduct Policy](#) or the [Code of Student Life](#) for further detail.

## **IX. Emergency Removal and Administrative Leave**

### **A. Emergency Removal**

- a. The university may remove a Respondent from the university's education program or activity on an emergency basis, so long as the university undertakes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. The university will provide Respondent with written notice of the emergency removal and the reasons therefor.

- b. Within ten (10) business days of the effective date of the emergency removal, Respondent may submit a written request for termination or modification of the emergency removal to the Title IX Coordinator, who will consult with the appropriate university official. In reviewing the request, the Title IX Coordinator shall consider the following issues only:
  - i. the reliability of the information concerning Respondent's conduct, including an assertion of mistaken identity; and
  - ii. whether the conduct in the surrounding circumstances reasonably indicates that the continued presence of Respondent in the university's education program or activity presents an immediate threat to the physical health or safety of any student or other individual.
- c. The Title IX Coordinator may, in their discretion, meet with Respondent and utilize information gathered in that meeting to make a decision whether to terminate or modify the emergency removal.

#### B. Administrative Leave

- a. Nothing in this Policy or in Title IX precludes the University from placing a non-student employee Respondent on administrative leave during the pendency of the proceedings outlined in this Policy.

### X. Formal Complaints

#### A. Initiating a Formal Complaint

- a. A Complainant may submit a Formal Complaint by submitting to the Title IX Coordinator or the Title IX Coordinator's office staff a document that alleges sexual harassment against a Respondent and requests that the university investigate the allegation of sexual harassment. The Formal Complaint may be submitted from Complainant's official university email account, through the report form located on <https://uncw.edu/titleix/>, or in hard copy if it is signed by Complainant.
- b. At the time of submitting a Formal Complaint, a Complainant must be participating in or attempting to participate in the university's education program or activity.
- c. The Title IX Coordinator, at their sole discretion, may submit a Formal Complaint even when a Complainant declines to do so. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under this Policy.

#### B. Notice of Formal Complaint

- a. Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the following written notice to the parties who are known:
- b. Notice of this Policy, including the informal resolution process described in Section XIII.

- c. Notice of the allegations that potentially constitute sexual harassment under this Policy, including sufficient details known at the time and with sufficient time (at least 48 hours) to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known; the conduct allegedly constituting sexual harassment under this Policy; and the date and location of the alleged incident, if known.
- d. A statement that Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the proceedings outlined in this Policy.
- e. Notice that all Parties may have a Title IX Advisor of their choice, who may be, but is not required to be, an attorney, and who may inspect and review evidence under Section XIV of this Policy.
- f. Notice of the specific provision of university policy that prohibits knowingly making false statements or knowingly submitting false information during the proceedings outlined in this Policy.
- g. If, in the course of an investigation, the university decides to investigate allegations about Complainant or Respondent that are not included in the original notice, the university will issue notice of the additional allegations to the Parties.

#### C. Consolidation of Formal Complaints

- a. The Title IX Coordinator may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

### XI. Dismissal

#### A. Mandatory Dismissal of Formal Complaint

- a. The Title IX Coordinator must dismiss a Formal Complaint if the conduct alleged in the Formal Complaint is not Covered Conduct. Allegations within a Formal Complaint that have been dismissed by the Title IX Coordinator may still be addressed by other university policies as outlined in Section II above.

#### B. Permissive Dismissal of Formal Complaint

- a. The Title IX Coordinator may dismiss a Formal Complaint or any allegations therein, if at any time during the informal resolution, investigation, or hearing:
  - i. a Complainant notifies the Coordinator in writing that Complainant would like to withdraw the Formal Complaint or any allegations therein;
  - ii. Respondent is no longer enrolled or employed by the university; or

iii. specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

#### C. Notice of Dismissal

- a. Upon a dismissal of a Formal Complaint, the Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. Any party may appeal the Title IX Coordinator's dismissal of the Formal Complaint or any allegations therein as provided in Section XVI below.

### XII. Title IX Advisors

- A. All Parties are permitted to have a Title IX Advisor of their choice, at their own expense, accompany them to any meeting or proceeding outlined in this Policy. The Title IX Advisor may be, but is not required to be, an attorney.
- B. A Title IX Advisor may be required to complete specific paperwork regarding this Policy and the parameters of student or employee confidentiality prior to serving as a Title IX Advisor. A Title IX Advisor may be present in meetings and interviews outlined in this Policy only when the party they advise is present. A Title IX Advisor may not unreasonably delay, disrupt, or otherwise interfere with the meetings or other proceedings outlined in this Policy.
- C. If a party does not have a Title IX Advisor present at the hearing described in Section XIV below, the university will provide a Title IX Advisor of the University's choice without fee or charge for the limited purpose of conducting cross-examination on behalf of the party.

### XIII. Informal Resolution

#### A. Voluntary Process

- a. At any time prior to reaching a determination regarding responsibility, with the voluntary written consent of both parties, the university may, at the discretion of the Title IX Coordinator, facilitate an informal resolution process that does not involve a full investigation and hearing. The parties' option to pursue an informal resolution process is completely voluntary. At any time prior to agreeing to a final resolution, all parties have the right to withdraw from the informal resolution process and resume the investigation and hearing of the Formal Complaint pursuant to Section XIV below.
- b. The informal resolution process is not available to resolve allegations that a faculty or staff member committed sexual harassment against a student.

#### B. Notice

- a. Prior to agreeing to participate in a voluntary informal resolution process, Complainant and Respondent will receive written notice setting forth:

- i. the allegations,
- ii. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, and
- iii. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

#### C. Agreement to Participate

- a. Parties will have three (3) days after receiving written notice to consider whether they wish to participate in the informal resolution process. If all parties provide their voluntary consent to the university in writing by the end of the three (3) days, then the informal resolution process will move forward.

#### D. Facilitator

- a. The Title IX Coordinator will appoint a trained facilitator, who does not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against an individual Complainant or Respondent, to facilitate the parties' informal resolution. Any party may notify the Title IX Coordinator if they believe that the appointed facilitator has a conflict of interest or bias.

#### E. Final Resolution

- a. The appointed facilitator will meet separately with the parties to discuss possible resolutions to the Formal Complaint and to ascertain each party's perspective regarding responsibility and sanctions. In most cases, the parties will not interact directly with each other during the informal resolution process unless agreed upon by all parties and deemed necessary by the appointed facilitator.
- b. If, after consultation with the Title IX Coordinator, the appointed facilitator identifies a potential resolution, the appointed facilitator will offer the resolution in writing to all parties. The parties will have three (3) days to consider the offered resolution. If all parties sign the offered resolution of the Formal Complaint, the resolution becomes final and no further action may be taken related to the case. The signed informal resolution may not be appealed.

### **IV. Formal Resolution**

#### A. Investigation

- a. Formal Complaints that are not dismissed by the Title IX Coordinator or resolved through the Informal Resolution process will be investigated. The Title IX Coordinator will appoint two (2) trained investigators. Investigators are neutral fact-finders who do not have a conflict of interest or bias for or against Complainants or Respondents generally or for or

against an individual Complainant or Respondent. Any party may notify the Title IX Coordinator if they believe that the appointed Investigator(s) has a conflict of interest or bias.

- b. The investigators will typically conduct interviews and follow-up interviews with Complainant, Respondent and third-party witnesses and gather any and all available evidence relevant to the investigation.
- c. The Title IX Coordinator, in consultation with the appropriate university official overseeing the implementation of other relevant policies, may, but is not required to, request that the investigators also investigate violations of other University policies. All policy violations investigated under this policy will be adjudicated utilizing the grievance procedures herein.
- d. A typical investigation will be completed in sixty (60) days, if not sooner. Reasonable extensions of time are permissible and both parties will be notified in writing if any extension is needed.
- e. Throughout the investigation process, the investigators will:
  - i. Maintain the burden of gathering evidence sufficient to reach a determination regarding responsibility;
  - ii. Not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, unless given voluntary, written consent to do so by the affected party;
  - iii. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege;
  - iv. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
  - v. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
  - vi. Provide the parties with equal opportunities to be accompanied by the Title IX Advisor of their choice, who may be, but is not required to be, an attorney to any related meeting or proceeding;
  - vii. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings, with sufficient time for the party to prepare to participate;
  - viii. Provide all parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and all inculpatory or exculpatory

evidence.

- f. Prior to completion of the investigative report, the investigators will send to all parties and the parties' Title IX Advisors, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and give the parties ten (10) days to submit a written response, which the investigators will consider prior to completing the investigative report. The investigators will then finalize the investigative report that fairly summarizes relevant evidence. The investigative report will be sent to all parties and the parties' Title IX Advisors, if any, at least ten (10) days prior to a hearing for their review and written response.

## B. Hearing

### a. Generally

- i. Upon conclusion of the investigation, an external adjudicator will oversee a hearing in order to make a determination regarding the Formal Complaint. The external adjudicator will be appointed by the Title IX Coordinator and must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against an individual Complainant or Respondent. Any party may notify the Title IX Coordinator if they believe that the appointed external adjudicator has a conflict of interest or bias.
- ii. Hearings pursuant to this Policy may be conducted with all parties physically present in the same geographic location or, at the university's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- iii. All hearings under this policy will be transcribed by a transcriber present at the hearing and will make it available to the parties for inspection and review. In the event that such a transcriber is not available, the hearing will be audio recorded. Such recording or transcript will be maintained in accordance with Section XVIII of this Policy. No party, Title IX Advisor, witness, or other individual may record the hearing.

### b. Available Evidence

- i. Any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and all inculpatory or exculpatory evidence, will be available to all parties and their Title IX Advisors at the hearing. All parties will have an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- ii. If there are additional witnesses or documentary evidence that was not available and/or submitted during the investigation process, it must be provided to the Title IX Coordinator at least five (5) business days prior to the hearing. Documentary evidence should be organized chronologically and each page shall be numbered. When possible, all such evidence should be submitted electronically. It is the complainant's and respondent's responsibility to notify their witnesses of the day, time and location of the hearing.

### c. Testimony and Cross-Examination

- i. The external adjudicator may not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
- ii. The external adjudicator will permit each party's Title IX Advisor, if any, to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing will be conducted directly, orally, and in real time by the party's Title IX Advisor and never by a party personally.
- iii. At the request of either party, the university will permit the parties to be located in separate rooms for the hearing with technology enabling the external adjudicator and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the external adjudicator will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- iv. If a party does not have a Title IX Advisor present at the hearing, the university will provide a Title IX Advisor of the university's choice without fee or charge for the limited purpose of conducting cross-examination on behalf of the party. The university-appointed Title IX Advisor will relay the party's desired questions to be asked of other parties and witnesses.
- v. Questions and evidence about Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about Complainant's prior sexual behavior are offered to prove that someone other than Respondent committed the conduct alleged by Complainant, or if the questions and evidence concern specific incidents of Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent.

### d. Determination

- i. The external adjudicator will issue a written determination to the Title IX Coordinator regarding responsibility. To reach this determination, the external adjudicator will apply the clear and convincing evidence standard. The written determination will include:
  - i. Identification of the allegations potentially constituting sexual harassment as defined in this Policy;
  - ii. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - iii. Findings of fact supporting the determination;

- iv. Conclusions regarding the application of this Policy or related university policies to the facts;
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, proposed sanctions for the appropriate university official's consideration if Respondent is found responsible, and whether remedies designed to restore or preserve equal access to the university's education program or activity for Complainant will be recommended to the Title IX Coordinator; and
- vi. The university's procedures and permissible bases for Complainant and Respondent to appeal.

e. Notice of Determination

- i. The Title IX Coordinator will provide the external adjudicator's written determination to the parties simultaneously. Any party may appeal the determination regarding responsibility pursuant to Section XVI below. The determination regarding responsibility becomes final either on the date that the Title IX Coordinator provides the parties with the written determination of the result of the appeal, if an appeal is submitted, or on the day the appeal period outlined in Section XVI expires, if an appeal is not timely submitted. When the final determination includes a finding of responsibility against Respondent, the Title IX Coordinator will share that determination and the external adjudicator's proposed sanctions with the appropriate university official to impose sanctions pursuant to Section XV below.

## XV. Sanctions and Remedies

### A. Sanctions

- a. The external adjudicator will issue a finding to the appropriate university official including any sanctions against a student Respondent that are permitted by Section II-4 of the Code of Student Life, including, but not limited to written warning, disciplinary probation, suspension, or expulsion. For any faculty or staff Respondent, the external adjudicator will issue a finding including any sanctions, including but not limited to required training, written reprimands, and suspension or termination of employment.
- b. After considering the finding by the external adjudicator, and in consultation with the Title IX Coordinator, a university official will impose appropriate sanctions.
  - i. In cases involving student Respondents, the university official will be in accordance with the Code of Student Life.
  - ii. In cases involving faculty and staff, any relevant handbook or grievance procedures will guide the selection of the relevant university official.

### B. Remedies

- a. After considering any recommendation by the external adjudicator, the Title IX Coordinator may conclude that certain remedies are necessary to restore or preserve Complainant's equal access to the university's education program or activity. Remedies may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, no-contact orders, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Unlike Supportive Measures, remedies need not be non-disciplinary or non-punitive and need not avoid burdening Respondent. The Title IX Coordinator is responsible for effective implementation of any remedies.

## VI. Appeals

### A. Timeframes and Bases for Appeal of Complaint Dismissal

- a. Any party may appeal a determination regarding responsibility or the Title IX Coordinator's dismissal of a Formal Complaint or any allegations therein on the following bases:
  - i. Procedural irregularity that affected the outcome of the matter (including, but not limited to, a material deviation from Substantive and Procedural Standards adopted by the Board of Governors, described in The University of North Carolina Board of Governors Policy 700.4.1 for cases involving student Respondents);
  - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  - iii. The Title IX Coordinator, investigator(s), or external adjudicator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- b. For student cases, a party must submit an appeal in writing within five (5) business days to the Vice Chancellor of Student Affairs. Thereafter, the Vice Chancellor of Student Affairs or designee will review the decision and the record in making a determination. No further appeal is available. Nothing in this Policy restricts a party's appeal rights provided under other applicable laws or University policies or procedures.
- c. For faculty/staff cases, a party must submit an appeal in writing within five (5) business days to the Associate Vice Chancellor for Human Resources. Thereafter, the Associate Vice Chancellor for Human Resources or designee will review the decision and the record in making a determination. No further appeal is available. Nothing in this Policy restricts a party's appeal rights provided under other applicable laws or University policies or procedures.

### B. Process for Appeal of Formal Resolution Outcome

- a. For student cases:

- i. A party must submit an “Intent to Appeal” form within two (2) business days after notification of the original decision. The “Request for Appellate Consideration Form” must be submitted within five (5) business days after notification of the original decision. Reasonable extensions of time are permissible upon request prior to the deadline for submission. Such petition shall be submitted to the Office of the Dean of Students and explain in detail the reason(s) for the student’s appeal. Nothing in this Policy restricts a party’s appeal rights provided under other applicable laws or University policies or procedures.
- b. For faculty/staff cases:
  - i. A party must submit an “Intent to Appeal” form within two (2) business days after notification of the original decision. The “Request for Appellate Consideration Form” must be submitted within five (5) business days after notification of the original decision. Reasonable extensions of time are permissible upon request prior to the deadline for submission. Such petition shall be submitted to the Office of Human Resources and explain in detail the reason(s) for the appeal. Nothing in this Policy restricts a party’s appeal rights provided under other applicable laws or University policies or procedures.
- c. The Title IX Coordinator or designee will notify all Parties in writing when an appeal is submitted.
- d. The Appeal Panel is comprised of three (3) vice chancellors or their designees.
- e. Upon receiving a petition, the Appeal Panel shall obtain the full record of the external adjudicator. The record shall include the investigative report, the hearing transcript, the decision of the hearing including a case summary and rationale for supporting the decision, and other relevant documents. With this information, the Appeal Panel will conduct an Appellate Review based on one or more of the options for an appeal outlined above. Both the complainant and respondent typically will be notified in writing of the decision within fifteen (15) business days after receipt of the petition. Reasonable extensions of time are permissible.
- f. The Appeal Panel will review all written correspondence associated with the case and any new evidence submitted that was not available during the original adjudication. The Appeal Panel may request additional documents and information from the external adjudicator that heard the case, and may invite the complainant, the respondent, the external adjudicator, the investigators and such other persons as deemed appropriate to appear to make statements and respond to questions. If the Appeal Panel needs to meet with any of the aforementioned individuals, notification shall be given in writing at least two (2) business days prior to the date set for the meeting, specifying time and place of the meeting and informing the complainant and/or respondent of their rights as outlined herein.
- g. The Appeal Panel has the authority to approve, reject or modify the decision in question or to remand the case back to the external adjudicator.
- h. For student cases that do not result in suspension or expulsion, the decision of the Appeal Panel is final.

- i. Consistent with Section 502D(3) of the UNC Policy Manual, where the sanction is suspension or expulsion, an appeal may be made to the Board of Trustees within three (3) business days of notification that the original appeal has been denied. This appeal is for an individual student conduct case (not campus organizations), provided the appeal is based on 1) violation of due process; or 2) a material deviation from Substantive and Procedural Standards adopted by the Board of Governors.
  - ii. The Board of Trustees will review the appeal within ten (10) business days. Reasonable extensions of time will be permitted. For suspension or expulsion level cases, the appeal to the Board of Trustees is final.
- i. For faculty and staff cases, any additional relevant handbook or grievance procedures may apply.

## VII. Training

- A. The Title IX Coordinator, investigators, hearing officers/external adjudicators, appellate officers, and informal resolution facilitators receive regular training on, in addition to other topics:
  - a. the definition of sexual harassment,
  - b. the scope of the university's education program or activity,
  - c. how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
  - d. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- B. External adjudicators also receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about Complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

## VIII. Recordkeeping

- A. The University will maintain the following records in accordance with the UNC System Records Retention Schedule and in no event for less than seven (7) years:
  - a. Records of any Supportive Measures or other response taken to a report or Formal Complaint of sexual harassment;
  - b. Records of each investigation under this Policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript;
  - c. Records of any disciplinary sanctions imposed on Respondent, and records of any remedies provided to Complainant designed to restore or preserve equal access to the university's education program or activity;

- d. Records of any appeal and the result therefrom;
- e. Records of any informal resolution and the result therefrom; and
- f. Records of all materials used to train the Title IX Coordinator, investigators, hearing officer(s)/external adjudicators, appellate officers, and any person who facilitates an informal resolution process.

#### **IX. Other Rights and Obligations**

- I. Nothing in this Policy shall be interpreted to infringe on rights protected by other laws and policies, including but not limited to the First, Fifth, and Fourteenth Amendments to the U.S. Constitution; academic freedom; and the Americans with Disabilities Act.
- II. Nothing in this Policy shall be interpreted to prevent the university from complying with other federal laws, including but not limited to Title VII of the Civil Rights Act.