

# Policies, Regulations & Rules

## REG 04.25.08 Title IX Sexual Harassment Complaint Resolution Procedures

**Authority:** Chancellor

**History:** First Issued: August 14, 2020; Last Revised: July 23, 2024, with an Effective Date of August 1, 2024.

**Related Policies:**

**NCSU POL04.25.05 – Equal Opportunity and Non-Discrimination Policy**

**NCSU POL11.35.01 – Student Conduct**

**NCSU REG 11.35.05 – Code of Student Conduct**

**NCSU REG11.35.02 – Student Discipline Procedures**

**NCSU REG04.25.06 – Discrimination and Harassment Prevention and  
Response Training**

**NCSU REG 04.25.02 – Discrimination, Harassment and Retaliation**

**Complaint Procedure**

**NCSU REG 04.25.06 – Equal Opportunity, Title IX and Nondiscrimination  
Training for Employees**

# **UNC System SHRA Employee Grievance Policy**

**Contact:** Vice Provost for Equal Opportunity (919) 515-4559

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## **1. INTRODUCTION**

This regulation serves as a companion to NCSU POL 04.25.05–Equal Opportunity and Nondiscrimination Policy (“Nondiscrimination Policy”) to outline the specific procedures at North Carolina State University (“NC State” or the “University”) for reporting and responding to sexual harassment as specifically defined by Title IX of the Education Amendments of 1972 (“Title IX”).

## **2. DEFINITIONS**

For purposes of this regulation, the following definitions shall apply:

- a. *“Actual Knowledge”* means notice of allegations of Title IX Sexual Harassment or Retaliation provided to NC State’s Title IX Coordinator or one of NC State’s Title IX Designated Officials.
- b. *“Advisor”* means a person who may be, but is not required to be an attorney, who may assist and advise a Party within the Complaint Resolution Process.
- c. *“Complainant”* means a person to whom the alleged Title IX Sexual Harassment was directed. At the time of filing a Formal Complaint, a Complainant must be participating in, or attempting to participate in, an NC State Education Program or Activity.
- d. *“Complaint Resolution Process”* means NC State’s procedures for resolving Formal Complaints of Title IX Sexual Harassment and includes the filing of a Formal Complaint, provision of Supportive Measures, preliminary review of the Formal Complaint, investigation, hearing, any informal resolution

proceedings, imposition of any disciplinary and/or remedial actions, and appeals.

- e. “Consent” with respect to assessing whether activity between individuals is voluntary means an affirmative decision to engage in such activity given by clear action or words. It is an informed decision made freely, willingly, and actively by all parties. Behavior will be considered “without consent” if no clear consent, verbal or nonverbal, is given. Consent cannot be procured by physical force, threats, intimidating behavior, or coercion. Prior consensual conduct between the Parties does not itself demonstrate or imply consent to current or future acts. A person cannot give consent if they are incapacitated as a result of alcohol or drug consumption (voluntary or otherwise), unconscious, unaware or asleep during the act, under the legal age to provide consent, or otherwise lack the capacity to consent. In determining whether a person is incapacitated, the analysis must include whether the Respondent knew or should reasonably have known that the person was incapacitated. Neither silence nor a lack of protest or resistance is a valid form of consent. Consent can be revoked or withdrawn at any time, even during a sexual act. If consent is withdrawn, the act is no longer consensual.
- f. “Day” means calendar days. If the day to take an action lands on a Saturday, Sunday, or day that the University is closed (such as a holiday), the deadline shall be extended to the next business day.
- g. “Education Program or Activity” includes locations, events, or circumstances over which NC State exercises substantial control over both the Respondent and the context in which the Title IX Sexual Harassment occurs (including employment), and also includes any building or property owned or controlled by NC State or a student organization that is officially recognized by NC State.
- h. “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a

Respondent and requesting that the University investigate the allegation(s) of Title IX Sexual Harassment.

- i. “Hearing Officer” is a person appointed by the University to oversee the Title IX hearing and to render a determination of responsibility regarding the allegations in the Formal Complaint. A Hearing Officer may be an employee of the University or a person from outside the University engaged specifically for this function.
- j. “NC State’s Title IX Designated Officials” or “Title IX Designated Officials” are personnel authorized by NC State to receive notice of Title IX Sexual Harassment and Retaliation and to institute corrective measures. Title IX Designated Officials are listed on the Title IX Designated Officials website.
- k. “Office of Equal Opportunity” or “OEO” is the University office responsible for, among other duties, investigating allegations of Title IX Sexual Harassment. The OEO is located at 231 Winslow Hall, 40 Pullen Drive, Raleigh NC 27607 and has a mailing address of Campus Box 7530, NC State University, Raleigh, NC 27695-7530.
- l. “Party” and “Parties” are individual and collective terms used to describe Complainant(s) and Respondent(s) named in a Formal Complaint of Title IX Sexual Harassment.
- m. “Protected Activity” includes reporting information; making a Formal Complaint that alleges Title IX Sexual Harassment; participating as a Witness or a Party in an investigation, proceeding, hearing, or Complaint Resolution Process involving alleged Title IX Sexual Harassment.
- n. “Report” means a disclosure of information by any person to the Title IX Coordinator or an NC State Title IX Designated Official that includes allegations that may be covered by this Complaint Resolution Process. A Report is different from a Formal Complaint.
- o. “Respondent” means a person who has been reported to have engaged in conduct that could constitute Title IX Sexual Harassment.

- p. “Retaliation” is intimidating, threatening, coercing, or discriminating against any person for the purpose of interfering with any right or privilege secured by Title IX because the person engaged in a Protected Activity.
- q. “Support Person” is a person selected by a Party who may accompany the Party to any meeting, interview or hearing as part of the Complaint Resolution Process and who will provide emotional support and/or comfort to the Party. A Support Person may not be a Witness in the same proceeding.
- r. “Supportive Measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the Education Program or Activity without unreasonably burdening the other Party and include measures designed to protect the safety of all parties or the educational environment or to 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 restrictions on contact between the parties (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. The Title IX Coordinator is responsible for coordinating the implementation of Supportive Measures.
- s. “Title IX Coordinator” is the Vice Provost for the Office of Equal Opportunity and is the person designated to coordinate NC State’s efforts to comply with its responsibilities under Title IX of the Education Amendments of 1972 and its related regulations. As used in this regulation, reference to the Title IX Coordinator also includes their designee. The Title IX Coordinator’s contact information is contained on the [OEO website](#).
- t. “Title IX Sexual Harassment” for purposes of Title IX and this regulation means conduct on the basis of sex that satisfies one or more of the following:

(1) A university employee conditioning the provision of an aid, benefit, or service on another employee's or student's participation in unwelcome sexual conduct ("quid pro quo" harassment by an employee);

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an Education Program or Activity at NC State; or

(3) Sexual assault as defined in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act," specifically 20 U.S.C. 1092(f)(6)(A)(v)), dating violence as defined in Violence Against Women Act ("VAWA," specifically 34 U.S.C. 12291(a)(10)), domestic violence as defined in VAWA (34 U.S.C. 12291(a)(8)), stalking as defined in VAWA (34 U.S.C. 12291(a)(30)) (for ease of reference the definitions as they appear in those laws are provided below), or other sexual misconduct defined below.

(A) Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation including:

(i) Rape, defined as the carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;

(ii) Sodomy, defined as oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;

(iii) Sexual Assault With An Object, defined as the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;

(iv) Fondling, defined as the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the person, including instances where the victim is incapable of giving consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;

(v) Incest, defined as nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;

(vi) Statutory Rape, defined as nonforcible sexual intercourse with a person who is under the statutory age of consent.

(B) Dating violence means violence committed by a person—

(i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) where the existence of such a relationship shall be determined based on the consideration of the following factors:

(a) The length of the relationship;

(b) The type of relationship;

(c) The frequency of interaction between the persons involved in the relationship;

(C) Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitation with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family laws of the jurisdiction;

(D) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- (i) fear for their own safety or the safety of others; or
- (ii) suffer substantial emotional distress.

a. "Witness" is a person identified by a Party, the University, or through information otherwise gathered as part of a Complaint Resolution Process who may possess information or evidence relevant to allegations of Title IX Sexual Harassment. Witnesses may be invited to participate in interviews and/or proceedings in association with a Complaint Resolution Process. A Witness may not serve in another role (such as an Advisor or Support Person) during the Complaint Resolution Process in which they are already serving as a Witness.

### **3. PROHIBITED CONDUCT**

NC State prohibits Title IX Sexual Harassment and Retaliation. NC State will promptly and equitably address allegations of such conduct when the harassment occurs in the University's Education Programs or Activities in the United States.

### **4. SCOPE**

4.1 This regulation addresses NC State's procedures for reporting and responding to Reports and Formal Complaints of Title IX Sexual Harassment and Retaliation.

4.2 This regulation applies when (1) NC State has Actual Knowledge of Title IX Sexual Harassment; (2) the Title IX Sexual Harassment occurred within NC State's Education Programs or Activities; and (3) the Title IX Sexual Harassment is against a person in the United States.

4.3 Reported misconduct that does not constitute Title IX Sexual Harassment may still be prohibited and does not preclude the University from evaluating the reported misconduct under the provisions of other University policies and regulations, including the complaint resolution procedures described in NCSU REG 04.25.02–Discrimination, Harassment and Retaliation Complaint Procedures.

4.4 Members of the NC State community having questions about whether alleged misconduct falls under this or other policies should contact the Equal Opportunity and Equity Unit of the Office of Equal Opportunity.

## **5. REPORTING TITLE IX SEXUAL HARASSMENT**

5.1 At any time, including during non-business hours, any person may make a Report regarding Title IX Sexual Harassment (whether or not the person reporting is the person impacted by the alleged conduct) or Retaliation through any of the following mechanisms:

- a. In person by speaking to the Title IX Coordinator, any of the Equal Opportunity and Equity (EOE) investigators (whose offices are located in the OEO), or any of NC State's Title IX Designated Officials;
- b. By delivering, mailing, or otherwise transmitting the Report to the OEO;
- c. By calling OEO at [\(919\) 513-0574](tel:919-513-0574);

- d. By emailing the Report to [equalopportunity@ncsu.edu](mailto:equalopportunity@ncsu.edu);
- e. By completing the OEO online [Discrimination, Harassment, and Retaliation Report Form](#), found at [ncsu.edu/safe](http://ncsu.edu/safe), or
- f. Through any other means that results in the Title IX Coordinator receiving the person's verbal or written Report.

5.2 Upon receiving a Report containing allegations of Title IX Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (whether or not a Formal Complaint is filed), consider the Complainant's wishes with respect to Supportive Measures, and explain the Complaint Resolution Process, including the option to file a Formal Complaint.

5.3 Anonymous Reports may be submitted to the OEO and Title IX Designated Officials; however, NC State's ability to respond or take further action from an anonymous Report may be impacted by the level of information available about the incident or the individuals involved.

## **6. FILING A FORMAL COMPLAINT OF TITLE IX SEXUAL HARASSMENT AND INITIAL RESPONSE**

### **6.1 Filing a Formal Complaint**

A Complainant may file, or the Title IX Coordinator, may initiate a Formal Complaint at any time by submitting any written document that is physically or electronically signed by the Complainant or Title IX Coordinator, alleges Title IX Sexual Harassment or Retaliation, and requests that the University investigate the allegation. The Formal Complaint may be submitted to the OEO through any of the following mechanisms:

- a. By delivering, mailing, or otherwise transmitting the Formal Complaint to the Title IX Coordinator;
- b. By emailing the Formal Complaint to [equalopportunity@ncsu.edu](mailto:equalopportunity@ncsu.edu);
- c. By completing an [OEO Formal Complaint Form](#); or
- d. Through any other means that results in the Title IX Coordinator receiving the person's signed Formal Complaint.

6.2 As soon as practicable after receiving a Formal Complaint, and with sufficient time to prepare for any interview or meeting, the Title IX Coordinator will provide a written notice to all known Parties that will include: the Complaint Resolution Process; the allegations potentially constituting Title IX Sexual Harassment, including information known at the time about the identities of the Parties involved, the conduct allegedly constituting Title IX Sexual Harassment, and the date and location of the incident (if known); and other pertinent information. Should additional allegations arise after the original notification has been provided to the Parties, the University will supplement the notification to the Parties.

6.3 In appropriate circumstances, to address imminent threats posed to any person's physical health or safety as a result of the Title IX Sexual Harassment allegations, NC State may evaluate whether to remove a Respondent from its Education Program and Activities on an emergency basis or to place an employee on administrative leave with pay during the Complaint Resolution Process.

- a. Emergency Removal. NC State may remove a Respondent from its Education Program or Activity on an emergency basis following an individualized safety and risk analysis that determines there is an immediate threat to the physical health or safety of any individual arising from the allegations of Title IX Sexual Harassment. The Respondent shall have the opportunity to challenge the decision immediately following the removal. The procedures related to this emergency removal for student Respondents are

contained in Appendix G of the Student Discipline Procedures (REG 11.35.02).

- b. Administrative Leave. NC State may place an employee on administrative leave with pay (or investigatory placement with pay for SHRA employees) during the Complaint Resolution Process.

## **7. UNIVERSITY'S RESPONSE TO TITLE IX SEXUAL HARASSMENT**

7.1 Upon receiving a Report containing allegations of Title IX Sexual Harassment, the Title IX Coordinator will reach out to the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, and explain the Complaint Resolution Process, including the option for filing a Formal Complaint. Supportive measures will be made available to affected persons with or without the filing of a Formal Complaint.

7.2 NC State will respond as appropriate to allegations of Title IX Sexual Harassment whether those allegations are the subject of a Report or are submitted as a Formal Complaint of Title IX Sexual Harassment.

7.3 When a Formal Complaint is filed, NC State will follow its Complaint Resolution Process as described in this regulation and will:

- a. treat Complainants and Respondents equitably;
- b. provide remedies, if any, to the Complainant where a determination of responsibility for Title IX Sexual Harassment has been made against the Respondent;
- c. follow the Complaint Resolution Process described in this regulation before imposing any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent;

- d. require that any person designated as a Title IX Coordinator, investigator, decision-maker, or other person authorized to facilitate an informal resolution not have a conflict of interest or bias for or against Complainants or Respondents either generally or in particular;
- e. require training that meets the requirements established by federal law for Title IX Coordinators, investigators, decision-makers, and any person who is authorized to facilitate an informal resolution;
- f. presume that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Complaint Resolution Process;
- g. use the preponderance of evidence (“more likely than not”) standard to determine whether the Respondent engaged in Title IX Sexual Harassment in violation of the Nondiscrimination Policy;
- h. provide an objective evaluation of all relevant evidence and not base any credibility decisions on a person’s status as a Complainant, Respondent or Witness;
- i. not require, allow, rely upon or otherwise use questions or evidence that would elicit information protected under a legally recognized privilege, unless the person holding the privilege has waived it;
- j. not allow, rely upon or otherwise use questions or evidence about a Complainant’s prior sexual behavior, unless such questions or evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if they concern specific incidents of the Complainant’s prior sexual behavior with the Respondent, are offered to prove consent;
- k. when making a determination of responsibility regarding an allegation of Title IX Sexual Harassment, allow the Hearing Officer to exercise discretion in determining the weight, if any, to place on any statement provided by the Witness as part of the investigation.

- l. not draw any inference about the determination of responsibility based solely on a Party's or Witness's absence from a hearing or refusal to answer cross-examination or other questions;
- m. establish a reasonable time frame for the completion of the Complaint Resolution Process and any appeals and provide for delays or extensions of time for good cause;
- n. describe the range of possible disciplinary actions or remedies that may be implemented following a determination of responsibility;
- o. describe the range of Supportive Measures available to Complainants and Respondents; and
- p. provide an appeal process.

## **8. CONFIDENTIALITY**

8.1 The University will not disclose personally identifiable information obtained through the Complaint Resolution Process except to carry out the purposes of those procedures and/or as required or allowed by law, and the University will take reasonable steps to protect the privacy of the Parties and Witnesses during the pendency of the Complaint Resolution Process.

8.2 Individuals who seek additional confidentiality are strongly encouraged to consult with individuals who, by law or University designation, are deemed confidential resources, such as mental health counselors, physicians, clergy, University ombuds, or private attorneys.

## **9. PRELIMINARY REVIEW OF FORMAL COMPLAINTS**

9.1 Once a Formal Complaint has been submitted, the OEO will conduct a preliminary review of the Formal Complaint to determine whether:

- a. The conduct is alleged to have occurred in the United States;

- b. The conduct is alleged to have occurred in an Education Program or Activity;  
and
- c. the Formal Complaint alleges facts that, if true, may constitute Title IX Sexual Harassment.

9.2 When the preliminary review of the Formal Complaint indicates the allegations within the Formal Complaint would not constitute Title IX Sexual Harassment even if all the facts alleged are true, OEO must dismiss the Formal Complaint consistent with Section 13 of these procedures. If dismissed, OEO will provide a Notice of Dismissal of the Formal Complaint to the Parties and information regarding how to appeal the decision.

9.3 The dismissal of a Formal Complaint under the Complaint Resolution Process does not preclude action under another University policy or regulation such as the Code of Student Conduct (REG 11.35.05) or NCSU REG 04.25.02–Discrimination, Harassment and Retaliation Complaint Procedures.

## **10. INFORMAL RESOLUTION**

10.1 Except for matters asserted by a student Complainant against an employee Respondent, at any time after the filing of a Formal Complaint but before a determination regarding responsibility is reached, the Parties may choose to participate in an informal resolution process facilitated by the University.

10.2 An informal resolution is an informed, signed, voluntary agreement between the Parties and NC State to resolve a Formal Complaint utilizing strategies such as facilitations, educational interventions, or other restorative principles to address the concern, prevent its recurrence, and/or restore the community. The informal resolution process allows the Parties an opportunity to resolve the issue without a formal hearing and the process is facilitated by a trained, neutral facilitator provided by NC State. The facilitator may be an NC State employee or

an external third-party. The informal resolution process does not result in a determination regarding whether the Respondent's conduct amounts to Title IX Sexual Harassment.

10.3 If the Parties reach an agreement during the informal resolution process, the resolution is binding. Any breach to any terms identified in the signed, voluntary agreement may result in disciplinary action.

10.4 To participate in the informal resolution process, all Parties must provide voluntary, written consent after reviewing a written notice disclosing the allegations, the parameters of the informal resolution process, and each Party's right to withdraw from the informal resolution process and resume the formal Complaint Resolution Process.

## **11. ADVISORS**

11.1 Throughout the Complaint Resolution Process, Parties are allowed to have, at their own expense, an Advisor of their choice.

11.2 After the final investigative report is prepared and the University and Parties are preparing for a hearing, if a Party has not yet secured an Advisor of their choice, the University will provide an Advisor to the Party.

11.3 Role of an Advisor.

- a. The role of an Advisor is to assist and to advise the Party.
- b. Each Party may be accompanied by their Advisor to any interview, meeting, hearing, or proceeding they have during the Complaint Resolution Process.
- c. The Advisor's name must be disclosed to the OEO prior to the first interview, meeting, hearing, or proceeding for which they will serve as the Advisor.  
Advisors are not permitted to speak on behalf of a Party during any interview

- or meeting prior to a hearing. The University reserves the right to remove an Advisor from any interview or meeting should these expectations be violated.
- d. The Party's Advisor may inspect and review any evidence directly related to the allegations raised in the Formal Complaint and any investigative report prepared.
  - e. At a hearing, each Party's Advisor is permitted to ask the other Party and any Witnesses relevant questions. Parties may only question other Parties or Witnesses through an Advisor, and the Advisor must pose the questions in a respectful, non-intimidating, and non-abusive manner.
  - f. Each Party will be provided with information concerning hearing procedures at least ten (10) days in advance of a hearing. These procedures will outline expectations for conduct of a Party and that Party's Advisor during the hearing, including but not limited to, expectations with regard to confidentiality, decorum, prohibitions on interruptions of testimony, the procedure for conferring with a Party and/or Advisor and/or requesting a break, and order of presentation of evidence. The University reserves the right to remove an Advisor and/or Party from a hearing should they fail to abide by the hearing procedures.

11.4 The University will not intentionally schedule meetings or hearings on dates where the Advisor for a Party is not available, provided that the Party's Advisor acts reasonably in providing available dates and works collegially to find dates and times that meet all schedules. The University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other University policies apply to matters governed under this regulation, and the University cannot agree to extensive delays solely to accommodate the schedule of an Advisor. The determination of what is reasonable shall be made by the Title IX Coordinator. The University will not be obligated to delay a meeting or hearing under this

process more than five (5) days due to the unavailability of an Advisor and may offer the Party the opportunity to obtain a different Advisor or use one provided by the University.

## **12. INVESTIGATION OF FORMAL COMPLAINTS, REVIEW OF EVIDENCE, AND INVESTIGATIVE REPORT**

In cases where a Formal Complaint is filed and not dismissed as described in Section 13 or otherwise resolved through an informal resolution process described in Section 10, NC State will investigate the allegations of Title IX Sexual Harassment. During the investigation, NC State will:

- a. provide an equal opportunity for the Parties to present Witnesses and evidence in the investigation;
- b. allow the Parties to have an Advisor of their choice to be present at any interview, meeting or related proceeding;
- c. provide written notice of the date, time, location, participants and purpose of any investigative interview or meeting to a Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate;
- d. provide the Parties (and their Advisors, if applicable) with an equal opportunity to inspect and review any evidence obtained in the investigation that is directly related to the allegations raised in the Formal Complaint, allow the Parties a period of at least ten (10) days to review the evidence in an electronic or hard-copy format (the format determined at the sole discretion of the University), and to allow the Parties to provide a written response to the University to consider prior to the conclusion of the investigation;
- e. make available at hearing any evidence obtained in the investigation that is directly related to the allegations raised in the Formal Complaint;
- f. not access, consider, disclose or otherwise use a Party's medical, psychological, and similar records made or maintained by a physician,

psychiatrist, psychologist, or other recognized professional unless the Party provides a voluntary, written consent to do so for purposes of the Complaint Resolution Process;

- g. create an investigative report that summarizes the relevant evidence, allow Parties to review the drafted report and provide clarifications or feedback and, at least ten (10) days prior to a hearing (if a hearing is to be held), send a copy of the investigative report to each Party (and their Advisor, if applicable) for their review and written response; and
- h. review any written responses received relating to the investigative report, finalize the report, and include the written responses as attachments to the report.

### **13. DISMISSAL OF COMPLAINT**

13.1 Mandatory Dismissal. As required by law, a Formal Complaint for Title IX Sexual Harassment must be dismissed if the conduct alleged in the Formal Complaint:

- a. would not constitute Title IX Sexual Harassment even if the allegations are true;
- b. did not occur as part of an NC State Education Program or Activity; or
- c. did not occur in the United States.

13.2 Permissive Dismissal. A Formal Complaint may be dismissed at any time during the Complaint Resolution Process if:

- a. Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any of the allegations therein;
- b. Respondent is no longer enrolled or employed at NC State; or
- c. specific circumstances prevent NC State from gathering evidence sufficient to reach a determination regarding the allegations in the Formal Complaint.

13.3 Notice of Dismissal. If the Formal Complaint is dismissed under the Complaint Resolution Process, OEO will simultaneously provide a Notice of Dismissal of Formal Complaint to the Parties in writing with the reason for the dismissal.

13.4 Effect of Dismissal. The dismissal of a Formal Complaint under the Complaint Resolution Process does not preclude action under another University policy or regulation such as the Code of Student Conduct (REG 11.35.05) or REG 04.25.02–Discrimination, Harassment and Retaliation Complaint Procedures.

13.5 Appeal of Decision to Dismiss. Either Party may appeal the decision to dismiss the Formal Complaint.

## 14. HEARINGS

14.1 The procedures governing the hearing process for student Respondents are contained in Appendix G of the Student Discipline Procedures, REG 11.35.02.

14.2 The procedures governing the hearing process for employee Respondents are contained in Appendix A of this regulation.

## 15. DETERMINATION OF RESPONSIBILITY

15.1 The decision-maker (i.e., hearing officer) will apply a preponderance of the evidence standard in determining whether the Respondent is responsible for engaging in Title IX Sexual Harassment.

15.2 The decision-maker's written determination will include a description of the allegation(s) at issue; a description of the procedural steps taken since receipt of the Formal Complaint; findings of fact to support the determination; conclusions regarding the application of the University's Nondiscrimination Policy and this regulation to the facts; conclusions relating to each allegation, including a

determination regarding responsibility and rationale; any disciplinary action to be imposed upon the Respondent; any remedies to be provided to the Complainant for the purpose of restoring or preserving equal access to an Education Program or Activity; and the procedures and permissible bases for appeal.

15.3 The procedures governing the determination of responsibility for student Respondents are contained in Appendix G of the Student Discipline Procedures, REG 11.35.02.

15.4 The procedures governing the determination of responsibility for employee Respondents are contained in Appendix A of this regulation.

## **16. APPEALS**

16.1 Either Party may appeal the decision to dismiss a Formal Complaint (or any allegations therein) or a determination regarding responsibility.

16.2 The procedures governing the appeals for student Respondents are contained in Appendix G of the Student Discipline Procedures, REG 11.35.02.

16.3 The procedures governing the appeals for employee Respondents are contained in Appendix A of this regulation.

## **17. RECORDKEEPING**

NC State will maintain for a period of at least seven (7) years all of the following Title IX Sexual Harassment records:

- a. Title IX Sexual Harassment investigation documents;
- b. any determination of responsibility;
- c. any hearing recording or transcript;

- d. any disciplinary action or sanction imposed on the Respondent;
- e. any remedies provided to the Complainant;
- f. any appeal and appellate decisions;
- g. any informal resolution and their results;
- h. any actions taken in response to a Report or Formal Complaint of Title IX Sexual Harassment (including any Supportive Measures); and
- i. any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

## **18. RELATIONSHIP TO OTHER NON-DISCRIMINATION LAWS**

18.1 Nothing in this regulation is intended to (a) restrict any rights that would otherwise be protected from government action by the First Amendment of the United States Constitution; (b) deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the United States Constitution; or (c) restrict any other rights guaranteed against government action by the United States Constitution.

18.2 Nothing in this regulation diminishes any person's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq* or any regulations promulgated thereunder.

## **19. TIMELINES WITHIN THE PROCEDURES**

The University will conduct its Complaint Resolution Process in a reasonably prompt manner, generally not exceeding one-hundred twenty (120) days after the filing of a Formal Complaint. For any timelines or deadlines included in these procedures for the Complaint Resolution Process, the timelines may be extended and/or the Complaint Resolution Process may be temporarily delayed for good cause. In the case of such an extension, the Parties will receive notification in

writing and the reason(s) for the extension. Examples of good cause could include, but are not limited to, the unavailability of Parties or Witnesses, the need for language assistance, or the need to accommodate disabilities.

General Timelines for Title IX Complaint Resolution Process	
Stage	Calendar Days
<b>Investigation</b>	<b>*Varies</b>
<p><b>Review evidence and investigative report before report is finalized</b></p> <p>Section 12(d)</p>	<b>10</b>
<p><b>Notice prior to a hearing</b></p> <p>Appendix A – Notice and Pre-Hearing #2</p> <p>Student Discipline Procedures, REG 11.35.02, Appx. G, Section 4.6</p>	<b>10</b>

**Opportunity for Parties to appeal 10**

Appendix A – Appeals  
#31

Student Discipline  
Procedures, REG  
11.35.02, Appx. G,  
Section 7.2

**Opportunity for non-appealing Party to respond to the appeal 10**

Appendix A – Appeals  
#6

Student Discipline  
Procedures, REG  
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**APPENDIX A**

**HEARING PROCEDURES FOR EMPLOYEE RESPONDENTS**

***Notification and Pre-hearing***

1. The Title IX Coordinator will appoint a Hearing Officer to hear the matter and will confirm that the Hearing Officer does not have a conflict of interest that would prevent them from remaining neutral. The Title IX Coordinator has the discretion to appoint a trained University employee or an external adjudicator to serve as the Hearing Officer.
2. The Parties will receive written notice of the allegations of Title IX Sexual Harassment to be reviewed at the hearing, the name of the Hearing Officer, and the date(s) of the hearing at least ten (10) days prior to the hearing.
3. Either Party must notify the Title IX Coordinator within five (5) days of delivery of the notice if they believe the Hearing Officer assigned to the case has a conflict of interest or bias such that the Hearing Officer could not provide for a fair hearing. The Title IX Coordinator shall have the discretion to remove or re-appoint a Hearing Officer if deemed necessary to address a reported conflict of interest or bias.
4. A Respondent, Complainant, Advisor, or Support Person should not engage in ex parte communications with the Hearing Officer.
5. Prior to the hearing, the Hearing Officer may ask the Parties whether they are able to stipulate or agree to any undisputed facts that would be entered into the record and intended to expedite the hearing.

### ***The Hearing***

6. Each Party shall have the opportunity to present their case at the hearing, including an equal opportunity to present fact and expert Witnesses and any inculpatory and exculpatory evidence.
7. If a Complainant or Respondent fails to appear at the hearing after receiving the appropriate notice and there are no extenuating circumstances that explain the failure to appear, the Hearing Officer may proceed with the hearing. The Hearing Officer will not draw any inferences about the Party's responsibility from their failure to appear at hearing.

8. The determination of responsibility will be made based on the allowable information contained in the record and presented at the hearing. There is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the hearing.
9. The Investigator for the case and/or University Police may be called as a Witness by either Party and may provide Witness testimony as allowed regarding their investigatory fact findings.
10. The Parties and/or the Hearing Officer may request the attendance of Witnesses. No Witness may be compelled to provide testimony.
11. The Hearing Officer shall exercise control over the proceedings to maintain decorum, to avoid redundancies, and to achieve the orderly completion of the hearing. The Hearing Officer may recess the hearing if they determine that the presence of additional information or Witness testimony is needed to make a decision. The Hearing Officer may exclude any person, including a Party, who disrupts a hearing or fails to follow procedures.
12. Hearings shall be recorded by the Hearing Officer. No other recordings or broadcasts shall be permitted. The recording will be maintained with the Respondent's case file and will be available to the employee as part of their personnel file and to the Parties for consideration during any appeal.
13. Witnesses shall be asked to affirm or swear that their testimony is truthful. Witnesses (faculty, staff or students) who intentionally provide false information may be subject to University disciplinary action.
14. Witnesses, including the Parties, will be provided the opportunity to provide additional or clarifying information pertaining to the investigative report at the hearing.
15. Witnesses, other than the Parties, will be excluded from the hearing during the testimony of other Witnesses. Witnesses may not discuss the testimony they provided with other Witnesses.

16. The University will make all directly related evidence available to the Parties at the hearing.
17. Formal rules of evidence or civil procedure shall not apply in hearings.
18. The Hearing Officer will consider all relevant evidence presented and will allow each Party's Advisor to pose relevant questions to the Parties and Witnesses. Before a Witness or Party answers a question directed to them by an Advisor, the Hearing Officer must first determine if the question is relevant. The Hearing Officer will exclude any irrelevant information or testimony (including duplicative questions), and, when excluded, the Hearing Officer will provide an explanation for the decision to exclude the information or question. The Hearing Officer reserves the right to provide additional reasons for the exclusion of information after the hearing concludes. The Hearing Officer will also supervise the proceedings to ensure that the Advisor adheres to the rules of decorum and is not abusive or intimidating.
19. Relevant evidence and questions do not include the following categories, which are deemed "irrelevant" at all stages of the Complaint Resolution Process:
  - a. Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior, unless they are offered to prove that someone other than the Respondent committed the alleged conduct or they concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent;
  - b. Evidence and questions that constitute or seek disclosure of information protected under a legally recognized privilege; and
  - c. Any Party's medical, psychological, and similar records unless the Party has given voluntary, written consent.
20. If a Witness (including a Party) is not present at the hearing or refuses to submit to cross examination at the hearing, the Hearing Officer may exercise discretion in determining the weight, if any, to place on any statement provided by the Witness as part of the investigation.

21. Parties and/or Witnesses must participate in the hearing face-to-face or via video conferencing technology. At the request of either Party, the live hearing (including cross-examination) may occur with the Parties located in separate rooms with technology enabling the Parties to see and hear each other.
22. Allegations against multiple employees involved in the same incident may be consolidated and considered in a single hearing.
23. The sequence of a Hearing shall be as follows:
  - a. The Hearing Officer will read statements regarding the expectations for the hearing, including expectations regarding truthfulness and confidentiality, and the allegations as listed in the notice which are to be considered at the hearing.
  - b. The University will present the information alleged in the Formal Complaint and evidence gathered through the investigation process. This may be done by presenting the Investigative Report and relevant evidence and/or through Witnesses.
  - c. The Hearing Officer will allow the Parties (or their Advisors) to make a short, opening statement summarizing their cases.
  - d. The Complainant will present their case, including any Witnesses. The Hearing Officer and Advisors may question the Complainant and Witnesses following each of their respective testimonies.
  - e. The Respondent will present their case, including any Witnesses. The Hearing Officer and Advisors may question the Respondent and Witnesses following each of their respective testimonies.
  - f. The Hearing Officer may limit or exclude questioning that is irrelevant. The Hearing Officer may also enforce the rules of decorum, requiring all Parties and Advisors to participate respectfully and non-abusively.
  - g. The Witnesses, including the Parties, will wait to be informed by the Hearing Officer whether the question is permitted in the hearing before responding.

- h. The Parties (or their Advisors) may make a closing statement. A closing statement is a short summary of the information previously presented and conclusions the speaker wishes the Hearing Officer to draw from the information.
- i. Following closing statements, the hearing will be considered closed.

## **DETERMINATION OF RESPONSIBILITY**

- 24. In reaching its determination, the hearing officer will apply a preponderance of evidence standard (i.e., whether the information presented has shown that it is “more likely than not” that the Respondent engaged in Title IX Sexual Harassment in violation of the Nondiscrimination Policy).
- 25. The Hearing Officer’s written decision, including an explanation of the findings and reasoning to support the decision, whether any remedies will be provided to the Complainant, and any disciplinary action against the Respondent will be sent to the Parties through a means where delivery can be verified. The Parties’ University email address will be the official primary mode of communication. A copy of the decision will also be provided to Employee Relations and to the Title IX Coordinator.
- 26. The time limit for filing an appeal begins upon delivery of the written decision to the Parties, respectively.
- 27. If the Hearing Officer issues a determination of responsibility for a Respondent who is an SHRA employee:
  - a. The Hearing Officer shall recommend a proposed sanction for consideration by the Respondent’s supervisor and University Employee Relations through the processes provided for in the SHRA Disciplinary Action Policy (DAP), if applicable. The written determination of responsibility and any referral from the Hearing Officer may become the official recommendation of the supervisor for any required Pre-

Disciplinary Conference (i.e., for sanctions of disciplinary suspension without pay; demotion; or dismissal).

- b. Any Appeal from a Title IX determination regarding responsibility or from dismissal of a Formal Complaint based on an allegation that Title IX personnel had a conflict of interest or bias shall be resolved within the Complaint Resolution Process and shall not constitute a grievable issue under the SHRA Grievance Policy.
  - c. Following the issuance of formal disciplinary action, an SHRA employee may file a grievance in accordance with the University of North Carolina SHRA Grievance Policy (SHRA Grievance Policy).
  - d. In grievances involving disciplinary sanctions imposed based upon the Complaint Resolution Process, the SHRA Grievance Panel may receive as evidence the written record of the Complaint Resolution Process and written determination of responsibility. The review by the SHRA Grievance Panel shall be limited to the question of whether the discipline is supported by just cause.
28. If the Hearing Officer issues a determination of responsibility for a Respondent who is an EHRA non-faculty employee, the recommended sanction will be referred to the Respondent's supervisor and Employee Relations for implementation. The conclusions of the Complaint Resolution Process are not grievable under Section 611 of *The Code*.
29. If the Hearing Officer issues a determination of responsibility for a Respondent who is a faculty member who is the beneficiary of institutional guarantees of academic tenure:
- a. The determination shall constitute misconduct under Section 603(1)(C) of *The Code*. Once the written decision in the Complaint Resolution Process becomes final (either as issued or following the completion of any Complaint Resolution Process appeal(s)), the Hearing Officer's sanction shall be a

- referral to the Chief Academic Officer for appropriate disciplinary sanction, if any.
- b. In proceedings under Section 603 of *The Code* involving the imposition of serious sanction based upon the Complaint Resolution Process, the written decision may be included as evidence of the grounds for the sanction, however, the determination of responsibility under this regulation is not subject to review.
30. If the Hearing Officer determines that the Respondent did not engage in Title IX Sexual Harassment, the Hearing Officer shall then consider whether the conduct constitutes Discrimination, Harassment or Retaliation as defined in NCSU REG 04.25.02–Discrimination, Harassment and Retaliation Complaint Procedures. In reaching this determination, the Hearing Officer shall consider all relevant evidence presented during the Hearing, including exhibits and testimony, as well as the Investigative Report and any accompanying exhibits. The Hearing Officer’s determination will be made in accordance with NCSU REG 04.25.02–Discrimination, Harassment and Retaliation Complaint Procedures, Section 9.2, with the Hearing Officer serving in the role of the OEO investigator; however, Section 9.2(b) shall not apply, because the Parties will have had an opportunity to review all relevant evidence, the investigative report, and pose questions during the Hearing. The Hearing Officer’s final report will be transmitted to the OEO, which will proceed in accordance with NCSU REG 04.25.02.

## **APPEALS**

31. The Parties shall be notified in writing of their appeal rights when provided with the Hearing Officer’s written decision. Either Party may appeal from a Hearing Officer’s determination regarding responsibility and from a dismissal of a Formal Complaint (or any allegations therein) based on one or more of the following grounds:

- a. Procedural irregularity that affected the outcome of the matter;
  - b. 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
  - c. The Title IX Coordinator, investigator(s) or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent that affected the outcome of the matter.
32. Any appeal should be directed to the Title IX Coordinator, who will notify the other Party in writing when an appeal has been filed. An appeal must be received within ten (10) days from the date that the written decision is issued to the Parties through any delivery method where receipt can be verified. If no timely appeal is filed, the Hearing Officer's written decision will be final. An extension of time to file an appeal may be requested in writing within the ten-day limit, and it is within the discretion of the Title IX Coordinator to grant or deny such requests.
33. The other Party shall have ten (10) calendar days from receipt of the notification of appeal from the Title IX Coordinator to provide a written response to the appeal. Upon receipt of an appeal and any written response to the appeal, the Title IX Coordinator shall appoint an Appeal Officer to review the appeal. The Appeal Officer may be a University employee or external third-party at the discretion of the Title IX Coordinator. The Title IX Coordinator will send a notice to all Parties identifying the Appeal Officer. A Party must notify the Title IX Coordinator within five (5) days if they believe the Appeal Officer assigned to the case has a conflict of interest or bias such that the Appeal Officer could not conduct a fair review of the appeal. The Title IX Coordinator shall have the discretion to remove or re-appoint an Appeal Officer if deemed necessary to address a reported conflict of interest or bias.
34. The appeal must contain the following:

- a. A copy of the decision being appealed;
- b. A detailed written statement specifying the grounds for appeal, a list of alleged errors in the decision or procedure, an explanation for why those decisions are in error, and the complete factual basis for the appeal;
- c. A requested remedy; and
- d. The signature of the appellant and date the appeal is being submitted.

35. The Title IX Coordinator will provide the documents submitted on appeal to the Appeal Officer. Appeals will be decided on the record of the original proceedings. New hearings will not be conducted on appeal. However, the Appeal Officer may choose to ask the parties to submit additional information about their positions on appeal, beyond the information in the appeal notice. If the Hearing Officer is alleged to have violated the Complaint Resolution Process, the Appeal Officer may ask the Hearing Officer to submit a written response to the appeal. Any written statement submitted must be drawn on information in the record and cannot include new information bearing on responsibility that was not presented at the hearing, except to the extent that new information pertains to the grounds for appeal, was not reasonably available prior to the hearing, and could affect the outcome of the matter. These written statements become part of the record.

36. Following their review, the Appeal Officer may:

- a. Affirm the findings imposed by the Hearing Officer;
- b. Remand the case to the Hearing Officer based on:
  - (i) Procedural errors that affected the outcome of the proceeding; or
  - (ii) New and significant material information that has become available and was not available previously to a person exercising reasonable diligence, which information could have affected the outcome of the proceeding.
- c. Remand the case to a new Hearing Officer if the Appeal Officer finds that the Hearing Officer had a conflict of interest or bias for or against Complainants

or Respondents generally or an individual Complainant or Respondent that affected the outcome of the matter.

37. The Appeal Officer will review the appeal documentation and any other information required (e.g., investigative report, hearing transcript, new evidence identified, etc.) to render a decision on the appeal. The Appeal Officer will issue a written decision on the appeal and the rationale for the result within fifteen (15) days of receipt of all documentation required to decide the appeal, but that deadline may be extended for good cause. The decision on appeal will be provided simultaneously to both Parties.

Audience: Faculty, Staff, and Students.

Category: Non-Discrimination.

Policies, Regulations & Rules

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