

# FAYETTEVILLE STATE UNIVERSITY

## SEXUAL HARASSMENT

<b>Authority:</b>	Issued by the Chancellor. Changes or exceptions to administrative policies issued by the Chancellor may only be made by the Chancellor.
<b>Category:</b>	University-Wide
<b>Applies to:</b>	●Administrators      ●Faculty      ●Staff      ●Students
<b>History:</b>	Revised – September 28, 2015 Revised – May 9, 2014 Revised – October 14, 2013 Revised – August 8, 2012 First Issued – August 2, 1994
<b>Related Policies/Laws/Regulations</b>	● <i>Title IX</i> ● <i>Sexual Misconduct</i> ● <i>Title IX, Education Amendments of 1972</i> [Title 20 U.S.C. Sections 1681-1688]
<b>Contact for Information:</b>	Title IX Coordinator (910) 672-2325 Office of Legal Affairs (910) 672-1145

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### I. INTRODUCTION

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex. In complying with Title IX, Fayetteville State University (University) prohibits and will not tolerate sex discrimination as it pertains to sexual harassment and sexual misconduct.

To ensure the University's compliance with Title IX, the University has implemented this policy (Policy) to set forth the University's commitment to maintaining a University environment free of sexual harassment and sexual misconduct and to inform the University community of the process involved in filing and investigating such allegations. The University will investigate and adjudicate allegations of sexual harassment or sexual misconduct in a prompt and equitable manner.

### II. SEXUAL HARASSMENT

#### A. Definition

For purposes of this policy, the University subscribes to the following definition of sexual harassment:

Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic or student status, or
- submission to or rejection of such conduct by an individual is used as the basis for employment, academic or other institutional decisions affecting such individual, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, academic activities or student experience, or creating an intimidating, hostile or offensive working, academic or student life environment.

Both males and females can be victims of sexual harassment, and the harasser and the victim can be of the same sex.

**B. Types of Sexual Harassment**

There exist two types of sexual harassment that have been recognized under Title VII and Title IX. The types are as follows:

1. "Quid pro quo" (literally "this for that") involves harassment in which a supervisory employee or academic superior demands sexual favors in exchange for job or academic benefits over which that supervisor or academic superior has some control or influence.
2. "Hostile environment" does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct. This type of sexual harassment involves conduct that is sufficiently serious enough to interfere with an individual's work, academic performance, or social living.

Speech or conduct of a sexual or hostile nature that occurs in the context of educational instruction may constitute prohibited sexual harassment if it meets the definition of sexual harassment noted above and (1) is reasonably regarded as non-professional speech (i.e., advances a personal interest of the faculty member as opposed to furthering the learning process or legitimate objectives of the course) or (2) lacks accepted pedagogical purpose or is not related to the academic subject matter.

**C. Sexual Harassing Conduct/Behavior**

Sexual harassment may be coercive, unwelcome behavior, from subtle psychological force to gross physical abuse. Visual acts (such as leering and physical gestures conveying a sexual meaning), verbal actions (such as sexual innuendoes, suggestive remarks, sexually derogatory jokes), written materials (e-mail, cartoons or letters), or physical acts (such as hugging, pinching or fondling) may be considered as sexual harassment. Sexual harassment also includes requests for sexual relations combined with threats of adverse consequences if the man or woman refuses.

Conduct alleged to be sexual harassment shall be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the questioned behavior.

**D. Sexual Misconduct (Violence)**

Sexual misconduct is a form of sexual harassment that is prohibited by law. Sexual misconduct refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's mental capacity or use of drugs or alcohol. Sexual misconduct includes but is not limited to acts such as rape, sexual assault, sexual battery and sexual coercion.

A student who is the victim of an act of sexual misconduct *by a student* should file a complaint under the University's *Sexual Misconduct* policy. A student/employee who is the victim of an act of sexual misconduct *by a University employee or a third party* should file a complaint under this policy. A victim of an act of sexual misconduct is also encouraged to contact the University's Police and Public Safety.

**III. CONFIDENTIALITY**

The University recognizes the importance of confidentiality. Title IX Coordinators and University Officials shall respect the confidentiality and privacy of individuals reporting or accused of sexual harassment to the extent reasonably possible. Confidentiality may not be able to be maintained in circumstances where the law requires disclosure of information or when disclosure required by the University outweighs protecting the rights of others.

**IV. RETALIATION**

Retaliation against an individual who reports or complains of sexual harassment or who provides information in a sexual harassment investigation or proceeding is prohibited. Alleged retaliation shall be subject to investigation and may result in disciplinary action.

**V. FALSE CLAIMS**

An individual who knowingly makes false allegations of sexual harassment, or who knowingly provides false information in a sexual harassment investigation or proceeding, shall be subject to disciplinary action.

**VI. COMPLAINT PROCEDURES**

The purpose of these complaint procedures is to provide an opportunity for a prompt and fair resolution of sexual harassment allegations and to preserve the due process rights of the parties involved, including the right to receive notice of a complaint and to have an opportunity for an impartial investigation. Members of the University community who become aware of specific and credible allegations of sexual harassment, whether through the report of a complainant or otherwise, have an obligation to report the allegations promptly to the Title IX Coordinator.

An informal and formal process is available to individuals seeking to file a complaint based upon sexual harassment. Individuals utilizing the informal process may file a complaint in writing or orally. Individuals who file a formal complaint must do so in writing.

**A. Title IX Coordinator**

The University's Title IX Coordinator has ultimate oversight responsibility for coordinating the University's Title IX compliance efforts. This includes, but is not limited to conducting and/or coordinating investigations of complaints (i.e., sexual harassment) received pursuant to Title IX; ensuring a fair and neutral process for all parties; and monitoring all aspects of the University's Title IX compliance program. Individuals with questions or concerns about Title IX, and/or those who wish to file a complaint, may contact the Title IX Coordinator. Contact information for the Title IX Coordinator is as follows:

**Ms. Patricia Bradley**  
**Title IX Coordinator**  
Barber Building, Room 242  
(910) 672-2325  
[TitleIX@uncfsu.edu](mailto:TitleIX@uncfsu.edu)

**B. Informal Resolution**

The informal resolution process provides an alternative method of addressing complaints of sexual harassment aimed at stopping the behavior. Complaints that are resolved informally are not investigated to the same degree as formal complaints, although the complainant and the accused may be interviewed. However, the University reserves the right to conduct a full and complete investigation of any complaint even if the complainant has decided to seek to resolve the complaint using the informal resolution process.

An employee or student seeking to resolve a sexual harassment complaint informally shall provide a written statement to the Title IX Coordinator within thirty (30) calendar days of the alleged harassing behavior. The Title IX Coordinator will meet individually with the complainant and accused and any other parties that the Title IX Coordinator deems appropriate in an attempt to come to an informal resolution. Possible outcomes of an informal resolution may include explicit agreements about future conduct, changes in workplace assignments, substitution of one class for another, or other appropriate relief.

If the complainant decides that the formal review is preferable, at any time during the informal review process, the complainant may terminate the informal review process and begin the formal review process.

**C. Formal Resolution**

The formal resolution process is aimed at determining if sexual harassment has occurred, the culpability of the accused and appropriate sanctions or remedies, if necessary. The formal resolution process for employees subject to the State Personnel Act (SPA employees) differs from the formal resolution process for employees exempt from the

State Personnel Act (EPA employees) and students. The processes for each are detailed below.

**1. SPA Employees**

SPA employees who have a complaint of sexual harassment may use the formal grievance procedures outlined in the University's *Unlawful Workplace Harassment* policy. A complaint filed under the *Unlawful Workplace Harassment* policy must be submitted in writing to the Office of Human Resources within thirty (30) calendar days of the alleged harassing behavior. The filing of the action within this time period is required in order for SPA employees to maintain their appeal rights to the State Personnel Commission.

SPA employees who do not submit a written complaint to the Office of Human Resources within thirty (30) calendar days may still utilize the informal process described above for resolving concerns involving alleged sexual harassing behavior; however, such employees will not have the option of later appealing to the State Personnel Commission or using the University's formal resolution process for EPA employees and students which is outlined below.

**2. EPA Faculty and Non-Faculty Employees and Students**

**a. Filing a Complaint**

**i. Complaints against Employees or Students**

An EPA employee or student interested in filing a formal complaint against an employee or student shall provide the written complaint to the Title IX Coordinator within thirty (30) calendar days of the alleged harassing behavior.

**ii. Complaints against Third Parties**

The University prohibits sexual harassment by third parties towards members of the University community. Although individuals who are not students or employees of the University are not subject to discipline under the University's internal processes, the University will take prompt, corrective action to eliminate sexual harassment and prevent its recurrence. EPA employees or students who believe that they have been sexually harassed by an individual who is not a University employee or student should report the alleged sexual harassment to the Title IX Coordinator.

**b. Processing a Complaint**

Once a complaint is received, the Title IX Coordinator shall conduct a formal investigation. The Title IX Coordinator shall seek to have the complaint resolved within sixty (60) calendar days from the date the complaint was received.

**c. Investigation**

The Title IX Coordinator shall be responsible for reviewing and investigating written complaints received in a prompt and impartial manner. In so doing, the Title IX Coordinator shall be authorized to interview the complainant, the accused, and any witnesses in order to determine if sexual harassment has occurred and the culpability of the accused. Meetings with the parties to the complaint shall be conducted individually and shall not take the form of a hearing. The Title IX Coordinator shall keep an accurate record of all meetings and interviews.

Both parties shall be provided with the opportunity to present relevant witnesses and other evidence to the Title IX Coordinator.

**d. Findings and Conclusions**

Following the conclusion of the investigation, the Title IX Coordinator shall determine, (using the preponderance of the evidence standard, *i.e.*, it is more likely than not that sexual harassment occurred) whether or not the complaint rises to the level of sexual harassment.

**e. Report of Findings**

Once the Title IX Coordinator has concluded the investigation, the Title IX Coordinator shall draft a report consisting of the following:

- Name and sex of the complainant;
- A description of the allegation, including dates, times and individuals involved;
- The date the complaint or other report was made;
- The dates on which interviews were conducted;
- The names and sex of all known witnesses to the alleged incident;
- The date on which any relevant documentary evidence was obtained;
- Any written statements;
- Any interim steps taken with respect to the complainant and the respondent;
- A description of any action taken to prevent recurrence of any harassing incidents; and
- A summary of the findings and a determination as to whether or not the complaint rises to the level of sexual harassment.

Prior to issuing the final report to the University Official, the Title IX Coordinator shall consult with the Office of Legal Affairs. After such consultation, the Title IX Coordinator shall provide written notice to both parties of the results of the investigation.

A University Official is defined as one of the following individuals:

- *the Athletic Director* if the accused is an employee of the Department of Athletics;
- *the Director of Student Conduct* if the accused is a student;
- *the Dean of an Academic Unit* if the accused is an employee of a unit supervised by the Dean or if the accused reports directly to the Dean;
- *the Vice Chancellor* if the accused is an employee of a unit supervised by the Vice Chancellor or the accused reports directly to the Vice Chancellor
- *the Vice Chancellor for Academic Affairs* if the accused is a Dean or the accused reports directly to the Vice Chancellor for Academic Affairs; or,
- *the Chancellor* if the accused reports directly to the Chancellor
- *the General Counsel* if the accused is an employee of a unit supervised by the General Counsel or is a third-party who is not a student or employee.

At the time, the Title IX Coordinator issues the final report to the University Official, the Title IX Coordinator shall notify the complainant and the accused, in writing, as to whether or not sexual harassment was found to have occurred.

**f. Disciplinary Action**

After reviewing the final report, the University Official shall determine whether disciplinary action will be taken against the accused. Any consideration of disciplinary action shall be determined on the basis of the facts of each case as well as any University record indicating previous wrong doing by the accused. Any disciplinary action taken shall be in accordance with the University's faculty, staff or student disciplinary policies.

Notwithstanding the above, the University reserves the right to take immediate and reasonable action to stop any harassing behavior. Such action shall not be limited by the process provided herein.

**VII. RECORDS**

The Title IX Coordinator and University Official shall maintain all records related to cases involving allegations of sexual harassment until the process has been concluded. Once concluded the University Official shall forward such files to the Title IX Coordinator (for allegations made against an employee or third party) or the Director of Student Conduct (for allegations made against a student).

# SEXUAL HARASSMENT COMPLAINT PROCESS

