

FAYETTEVILLE STATE UNIVERSITY

PROHIBITED SEXUAL CONDUCT

This Policy is effective for incidents occurring on or after August 14, 2020.

Authority:	Issued by the Chancellor. Changes or exceptions to administrative policies issued by the Chancellor may only be made by the Chancellor.
Category:	University-Wide
Applies to:	●Administrators ●Faculty ●Staff ●Students
History:	Revised – August 14, 2020 Revised – August 21, 2017 Revised – August 9, 2016 Revised – October 13, 2015 Revised – September 16, 2015 Revised – September 1, 2015 Revised – May 1, 2013 Approved – August 8, 2012
Related Policies/ Regulations/Statutes	●Title IX ●Policy Statement on Non-Discrimination ●Title IX Regulations [34 CFR § 106] ●Family Educational Rights and Privacy (FERPA) [20 U.S.C. § 1232g] ●Title IX, Education Amendments of 1972 [20 U.S.C. §§ 1681-1688] ●The Violence Against Women Act of 1994, as reauthorized in 2000, 2005, and 2013 ●Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act [20 U.S.C. § 1092(f)]
Contact for Information:	Title IX Coordinator - (910) 672-2325 Office of the General Counsel - (910) 672-1145

I. PURPOSE

The purpose of this Prohibited Sexual Conduct Policy (Policy) is to set forth the commitment of Fayetteville State University (University) to maintaining a campus environment free of sexual harassment, sexual misconduct, relationship misconduct, and retaliation (Prohibited Sexual Conduct). The purpose of this Policy is also to inform the University community of the Title IX complaint resolution process involved with filing, investigating, and resolving reports/complaints of Prohibited Sexual Conduct.

Individuals who believe they have been subjected to Prohibited Sexual Conduct are encouraged to report the incident as outlined in this Policy. Upon receiving a report/complaint covered under this Policy, the University will respond promptly, equitably, and thoroughly. In addition, the University will take steps to prevent the recurrence of the conduct.

II. DEFINITIONS

Administrative Investigator is defined as an individual who will be responsible for investigating a Formal Complaint.

Complainant is defined as an individual who may have been the alleged victim of an act of Prohibited Sexual Conduct who is participating in or attempting to participate in the University's Education Program or Activity.

Disciplinary Action is defined as the University Official's imposed or recommended employment penalty issued in compliance with the University disciplinary policy (if any).

Education Program or Activity is defined as locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the alleged Prohibited Sexual Conduct occurred.

Effective Consent is defined as informed, freely and actively given, mutually understandable words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. In the absence of mutually understandable words or actions it is the responsibility of the initiator, that is, the person who wants to engage in the specific sexual activity, to make sure that they have consent from their partner(s). Effective Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to do the same act, in the same way, at the same time, with each other. The following should also be considered in determining Effective Consent:

- Effective Consent may never be given by minors (under the age of 16 in North Carolina) and mentally incapacitated persons.
- Effective Consent may never be given by individuals who are **incapacitated** as a result of alcohol or other drugs (including if self-ingested) or who are unconscious or otherwise physically helpless. Incapacitation means being in a state where an individual lacks the capacity to appreciate the nature of giving consent to participate in sexual activity.
- An individual may not engage in sexual activity with another who the individual knows, or should reasonably have known, is incapacitated as a result of alcohol or other drugs. The perspective of a reasonable person will be the basis for determining whether an individual should have known about the impact of the use of alcohol or drugs on another's ability to give consent. **Being intoxicated or high does not diminish an individual's responsibility to obtain Effective Consent and is never an excuse for Sexual Misconduct.**
- Effective Consent may not be inferred from silence, passivity or lack of active resistance alone.
- A current or previous dating or sexual relationship (or the existence of such a relationship with anyone else) may not, in itself, be taken to imply consent.
- Effective Consent cannot be implied by attire or inferred from the buying of dinner or the spending of money on a date.
- Effective Consent to one type of sexual act may not, in itself, be taken to imply Effective Consent to another type of sexual act.
- Effective Consent expires. Effective Consent lasts for a reasonable time, depending on the circumstances.
- Effective Consent which is obtained through the use of fraud or force, whether that force is physical force, threats, intimidation, or coercion, is ineffective consent. Intimidation or

coercion is determined by reference to the reasonable perception of a person found in the same or similar circumstances.

Formal Complaint is defined as a written document meeting the requirements of this Policy which is filed by a Complainant with the Title IX Coordinator or signed by the Title IX Coordinator (in cases where a Complainant refuses to sign) alleging Prohibited Sexual Conduct against a Respondent and requesting that the University investigate the allegations.

Formal Resolution is defined as a Title IX complaint resolution involving a hearing which is held to determine responsibility.

Informal Resolution is defined as a variety of options for resolving a Formal Complaint which do not involve a hearing.

Prohibited Sexual Conduct is defined as Sexual Harassment, Sexual Misconduct, Relationship Misconduct, or Retaliation.

Referral Sanction is defined as a hearing body's sanction of referring a finding of responsibility, along with any recommended Disciplinary Action, to the University Official for consideration of an appropriate Disciplinary Action.

Relationship Misconduct is defined as follows:

- **Dating Violence** which is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between people involved in the relationship.
- **Domestic Violence** is defined as violence that may constitute a felony or misdemeanor crime 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 cohabitated 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 North Carolina, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of North Carolina.
- **Stalking** is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. Allegations of Stalking are processed under this Policy only if the alleged Stalking behavior is based on sex. Non-sex-based Stalking may be addressed by other University policies.

Respondent is defined as an individual who has been accused of being the perpetrator of Prohibited Sexual Conduct.

Retaliation is defined as intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this Policy or because the

individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX complaint resolution investigation, proceeding, or hearing.

Sexual Harassment is defined as follows:

- an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct, or
- 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
- Sexual Misconduct or Relationship Misconduct.

Sexual Misconduct is defined as any sexual act directed against another person without the Effective Consent of the victim, including instances where the victim is incapable of giving Effective Consent. Such misconduct includes the following:

- **Fondling**
The touching of the private parts of another person for the purpose of sexual gratification, without the Effective Consent of the victim, including instances where the victim is incapable of giving Effective Consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest**
Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Rape**
The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without Effective Consent of the victim.
- **Statutory Rape**
Sexual intercourse with a person who is under the statutory age of being able to give Effective Consent.

Supportive Measures are defined as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

University Official is defined as one of the following individuals (or their designees) who makes certain decisions as outlined in this Policy:

- **Athletic Director** (if the Respondent is an employee of the Athletics Department);
- **Chancellor** (if the Respondent is an employee who reports directly to the Chancellor);
- **Vice Chancellor for Student Affairs** (if the Respondent is a student);
- **Dean** (if the Respondent is a non-faculty employee of a unit supervised by the Dean or if the Respondent is a non-faculty employee reporting directly to the Dean);
- **General Counsel** (if the Respondent is an employee of a unit supervised by the General Counsel or is a third-party who is not a student or employee);
- **Vice Chancellor** (if the Respondent is an employee of a unit supervised by the Vice

- Chancellor or the Respondent reports directly to the Vice Chancellor); or
- **Vice Chancellor for Academic Affairs** (if the Respondent is a Dean, the Respondent is an employee who reports directly to the Vice Chancellor for Academic Affairs, or the Respondent is a faculty member).

III. AMNESTY

The University will consider granting amnesty by not filing charges against a student Complainant who may have violated the University's prohibition against visitation, having alcohol and drugs on campus, or under-age drinking at the same time of the incident when the Complainant became a victim.

IV. REPORTING INCIDENTS

The University encourages individuals to promptly inform the University of incidents of Prohibited Sexual Conduct. A report of an incident generally precedes the filing of a Formal Complaint. The length of time between an incident and making a report to the University will not affect the willingness of the University to investigate the allegations in a Formal Complaint or to provide Supportive Measures to a Complainant. However, acting promptly will significantly improve the ability of the University to conduct a full administrative investigation and enhance the effectiveness of any criminal investigation. Individuals are, therefore, strongly encouraged to bring incidents to the University's attention immediately following the occurrence.

Individuals may contact any or all of the following offices/individuals:

A. Reports to Confidential Resources

The University's only confidential resources are the staff and trained licensed counselors in the Counseling and Personal Development Center and the staff and medical personnel in Student Health Services. These individuals can provide confidential counseling, information, and support to students. These confidential resources will not share information about a student (including whether that student has received services) without the student's express permission, unless there is a continuing threat of serious harm to the student or to others or there is a legal obligation to reveal such information (for example, suspected abuse or neglect of a minor).

B. Reports to Law Enforcement

The University encourages victims to inform law enforcement of incidents of Sexual Misconduct or Relationship Misconduct. If the incident occurred on University owned or leased property, the University Police is the appropriate agency with which to initiate a criminal complaint. Criminal incidents occurring on property not owned or leased by the University should be made to the appropriate city or county law enforcement agency. The University Police can assist with contacting the appropriate law enforcement agency.

If information about Prohibited Sexual Conduct is provided to the University Police, the University Police shall notify the individual whether they should file a report with the University Title IX Coordinator. The University Police shall report incidents to the Title IX Coordinator.

C. Reports to the Title IX Coordinator

Reports of Prohibited Sexual Conduct may be made to the Title IX Coordinator. Reports may be made by a Complainant or an individual who has information related to such an incident as follows:

Title IX Coordinator
Barber Building, Room 211
1200 Murchison Road
Fayetteville, NC 28301
(910) 672-2325
TitleIX@uncfsu.edu
www.uncfsu.edu/title-ix

The University encourages Complainants or others to report alleged Prohibited Sexual Conduct promptly to the Title IX Coordinator (or Deputy) or other University administrators at the level of Director or Chair or above. These University administrators and Deputy Title IX Coordinators will be required to forward such reports to the Title IX Coordinator.

The Title IX Coordinator oversees the University's investigation into all Formal Complaints and coordinates the effective implementation of Supportive Measures. Inquiries about the application of Title IX may be made to the Title IX Coordinator or the Assistant Secretary of the United States Department of Education.

A person may deliver a report, using the contact information listed above for the Title IX Coordinator, by any means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time. During non-business hours, the report should be made using the telephone number or e-mail address listed above.

D. Other University Employees

Except for those identified in Section IV.A., University administrators at the level of director/department chair or above and Deputy Title IX Coordinators with knowledge of Prohibited Sexual Conduct shall report such incidents to the University Police (if a crime is involved) and the Title IX Coordinator. Other employees should also report their knowledge of such incidents to the Title IX Coordinator or University Police. No employee is authorized to investigate or attempt to resolve an incident.

V. INITIAL MEETING WITH TITLE IX COORDINATOR

Upon receipt of a report of Prohibited Sexual Conduct which may have impacted a campus community member, the Title IX Coordinator (or deputy) will conduct outreach to the parties. Such outreach will include attempting to provide the parties their options for Supportive Measures, alternative options for support, resources, and assistance, details about the University's process for resolving Prohibited Sexual Conduct complaints, and other University, administrative, civil, and criminal options. Generally, individuals will be given the opportunity to decide to engage in the University's Title IX complaint resolution process.

The Title IX Coordinator may also discuss the issuance of a "no-contact" order to a student Respondent in accordance with the Code of Student Conduct.

The Title IX Coordinator is obligated to report statistical, non-identifying data regarding Sexual Misconduct or Relationship Misconduct occurring on the campus to the University police.

VI. SUPPORTIVE MEASURES

The Title IX Coordinator is responsible for coordinating effective implementation of Supportive Measures.

Supportive Measures are designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other party. Generally, these measures are meant to deter Prohibited Sexual Conduct for as long as needed.

Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive Measures may also include, but not be limited to actions taken against a Respondent such as counseling, warnings, and mutual restrictions on contact between the parties. The most common Supportive Measure is a no-contact order which directs parties from communicating with each other, themselves or through third-parties.

Supportive Measures are not available if an administrative investigation reveals that the Complainant has made false claims as described in this Policy.

The University shall maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures.

VII. INTERIM ACTIONS

A. Emergency Actions

The University may take one or more emergency actions against a Respondent in order to safeguard the University community at any time following an allegation of Prohibited Sexual Conduct. The University shall undertake an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifying removal from campus. Should a recommendation for removal be made, the Respondent will be removed and provided with written notice and an opportunity to challenge the decision immediately following the removal.

Additionally, if the Respondent is a student, the University shall follow the interim suspension procedures outlined in the Code of Student Conduct when issuing an emergency action.

B. Administrative Actions

Nothing shall preclude a University Official (or designee) from placing a Respondent employee on administrative leave in accordance with the applicable employment policy during the pendency of an investigation, Informal Resolution or Formal Resolution process.

VIII. ADVISORS

Each party shall have the same opportunity to be accompanied during the administrative investigation, Informal Resolution, and Formal Resolution by an advisor of their choice, who may be, but is not required to be, an attorney. Advisors may attend meetings, interviews or the hearing, but are not allowed to actively participate except during an Informal Resolution and Formal Resolution proceedings. During the Formal Resolution, neither the Respondent nor the Complainant may cross-examine witnesses; thus, the advisor shall be responsible for cross-examining witnesses.

If a party does not have an advisor present during a Formal Resolution proceeding, the University will provide, without fee or charge to that party, an advisor of the University's choice. The University provided advisor may be, but is not required to be, an attorney.

An advisor may be required to complete specific paperwork related to the advisor's understanding of the advisor's role in this process to include, but not be limited to, acknowledging that an advisor may not unreasonably delay, disrupt, or otherwise interfere with the meetings or other proceedings outlined in this Policy.

IX. FORMAL COMPLAINTS

When meeting with the individual reporting the incident, the Title IX Coordinator (or deputy) shall seek to determine if a Complainant wishes to file a Formal Complaint. Any Formal Complaint filed must be done so in writing. If the Complainant indicates an unwillingness to file a Formal Complaint, the Title IX Coordinator (or deputy) shall inform the Complainant that federal law requires the University to take reasonable action in response to the report of Prohibited Sexual Conduct.

A. Filing a Formal Complaint

If a Complainant files a Formal Complaint and the Formal Complaint is not dismissed, an administrative investigation into the alleged Prohibited Sexual Conduct shall be conducted.

Upon receiving a Formal Complaint, the Title IX Coordinator shall notify in writing the Respondent and Complainant of the Formal Complaint. The written notice must, among other things, include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX complaint resolution process.

If a Complainant refuses to file a Formal Complaint, the Title IX Coordinator (or deputy) may nonetheless proceed with an investigation.

B. Dismissal of Formal Complaint

If an automatic or discretionary dismissal occurs under this section of the Policy, the Title IX Coordinator shall promptly send written notice of the dismissal and the reason(s) for the dismissal simultaneously to the parties.

Dismissal of a Formal Complaint may occur in the following instances:

1. Automatic Dismissal

If the conduct alleged in the Formal Complaint (a) would not constitute Prohibited Sexual Conduct even if proved, (b) did not occur in the University's Education Program or Activity, or (c) did not occur against a person in the United States, then the University shall dismiss the Formal Complaint with regard to that particular conduct. Such a dismissal does not preclude action under another provision of the University's policies.

2. Discretionary Dismissal by the Title IX Coordinator

The University may dismiss the Formal Complaint or any allegations contained in the Formal Complaint, if at any time during the Title IX complaint resolution process the following occurs:

- a. a Complainant notifies the Title IX Coordinator, in writing, that the Complainant would like to withdraw the Formal Complaint or any allegations contained in the Formal Complaint;
- b. the Respondent is no longer enrolled or employed by University; or
- c. specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations contained within the Complaint.

X. INVESTIGATING FORMAL COMPLAINTS

A. Notice Requirement

Prior to beginning an administrative investigation into a Formal Complaint, the Title IX Coordinator shall notify the Complainant and Respondent of the investigation.

B. Administrative Investigation v. Criminal Investigation

If an Informal Resolution is not reached, is not appropriate, or is not pursued, the Administrative Investigator shall conduct a full, objective investigation into a Formal Complaint. An investigation into a Formal Complaint is considered an administrative investigation which is separate and distinct from a criminal investigation conducted by the University Police or another local law enforcement agency. The distinctions include, but are not limited to the following:

- 1. An administrative investigation can be conducted prior to or simultaneous with a criminal investigation, but under no circumstances shall an Administrative Investigator wait for the conclusion of a criminal investigation or criminal proceeding to begin an investigation. However, an Administrative Investigator may temporarily delay the fact-finding portion of the investigation while the University Police gathers its evidence, after notifying the parties of the reason for the delay. Once notified that the University Police has completed the gathering of its evidence (not the ultimate outcome of the criminal investigation or the filing of any criminal charges), the Administrative Investigator shall promptly resume and complete the fact-finding portion of the administrative investigation.

2. Information obtained through a criminal investigation may be used by University decision-makers and the Administrative Investigator for consideration in the administrative investigation, Informal Resolution, Formal Resolution, and Disciplinary Action process. Information obtained by the Administrative Investigator may not be provided to a law enforcement agency unless obtained in accordance with the Family Educational Rights and Privacy Act (FERPA).
3. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of a University policy, criminal investigative reports or results are not determinative of whether Prohibited Sexual Conduct, for purposes of this Policy, has occurred. Conduct may constitute Prohibited Sexual Conduct under this Policy even if a law enforcement agency lacks sufficient evidence of a crime and therefore declines to prosecute.

C. Administrative Investigation Core Principles

1. General

During the administrative investigation, both parties shall be provided with equal opportunity to present relevant facts, expert witnesses, and evidence, and the Administrative Investigator shall consider all such evidence.

2. Meetings

The Administrative Investigator shall provide written notice to parties (and their advisors if any) and witnesses of administrative investigation interviews, or other meetings, with sufficient time for the party to prepare to participate. The Administrative Investigator is responsible for keeping an accurate record of all meetings and interviews.

3. Investigative Report

Following the completion of the administrative investigation, the Administrative Investigator shall prepare a written investigative report. Prior to finalizing the report, the Administrative Investigator shall send to the Complainant, the Respondent and their advisors, if any the relevant and directly-related evidence in an electronic format or as a hard copy. The parties shall have at least ten (10) calendar days to submit a written response. The Administrative Investigator will consider the written response(s) prior to finalizing the investigative report.

Following the Administrative Investigator's consideration of any written responses received from the parties, the Administrative Investigator shall provide the Complainant and the Respondent with a final written report that fairly summarizes the relevant evidence.

Prior to issuing the final investigative report to the Complainant and Respondent, the Title IX Coordinator shall consult with the Office of General Counsel.

The final report that has not been dismissed for the employee Respondent shall be forwarded to the hearing body. The final report that has not been dismissed for the

student Respondent shall be forwarded to the Director of Student Conduct who will manage the formal charge and hearing process.

XI. INFORMAL RESOLUTION

At the discretion of the Title IX Coordinator and with written consent of the Complainant and Respondent, the Title IX Coordinator (or deputy) may utilize (an) informal approach(es) to resolving a Formal Complaint in lieu of or in conjunction with the investigation process. These opportunities for Informal Resolution may continue until a complaint is resolved under a Formal Resolution. Mediations, written pleas of responsibility, or other Informal Resolution between parties may not occur unless a Formal Complaint is filed and not dismissed by the University.

The Title IX Coordinator must provide to the parties a written notice of the option to utilize an Informal Resolution.

At any time prior to resolution of a complaint, the University, the Complainant or Respondent has the right to withdraw from the Informal Resolution process and resume the Title IX complaint resolution with respect to the Formal Complaint.

The University will not offer or facilitate an Informal Resolution to resolve allegations that an employee engaged in Prohibited Sexual Conduct with a student.

In the event that an Informal Resolution is not reached, is not appropriate, or is not pursued, the University or the Complainant will complete the Formal Resolution process.

If the parties agree in writing, the conclusion of the Informal Resolution process constitutes the conclusion of the Title IX complaint resolution process.

XII. FORMAL RESOLUTION—HEARING

A. Generally

Unless the Formal Complaint is dismissed or the parties agree in writing to an Informal Resolution, a hearing shall be held to determine responsibility.

No party, advisor, witness, or other individual may record the hearing.

B. Available Evidence

Any evidence obtained as part of the administrative 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 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.

C. Hearing Body Determination

After consideration of the evidence presented at the hearing, the hearing body shall determine responsibility. Such determination shall be made based upon the preponderance of the evidence standard.

The determination regarding responsibility becomes final either on the date the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. This constitutes the conclusion of the Title IX complaint resolution process.

The hearing body shall notify the Complainant, Respondent, and appropriate University Official of the decision and Referral Sanction, along with any recommended Disciplinary Action.

XIII. REMEDIES

After considering any recommendation by the hearing body, the Title IX Coordinator may conclude that certain remedies are necessary to restore or preserve equal access to the University's Education Program or Activity. The Title IX Coordinator will forward such recommendations to University Officials for their effective implementation. Remedies may include Supportive Measures. Remedies need not avoid burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of any remedies.

Remedies shall not be reviewed, grieved, or appealed except as described in the Policy.

XIV. STUDENT SANCTIONS

Sanctions will be imposed against a student Respondent as dictated by the Code of Student Conduct.

XV. EMPLOYEE REFERRAL SANCTIONS AND DISCIPLINARY ACTIONS

A. Referral Sanction

The sanction resulting from a hearing body finding of responsibility shall be a Referral Sanction.

B. Disciplinary Action

Disciplinary Actions that may be considered following a Title IX complaint resolution process shall be governed by the applicable University policies that pertain to the affected employee. The University Official shall not consider Disciplinary Action until a decision is made on a Title IX appeal or a determination is made that a Title IX appeal was not filed within 5 calendar days of receipt of the Title IX hearing body's written determination. Disciplinary Actions are not a part of the Title IX complaint resolution process.

Verbal or documented counseling and written warnings shall not be reviewed, grieved, or appealed.

1. SHRA Employees

If Disciplinary Action is imposed, an SHRA employee may file a grievance in accordance with the SHRA Grievance Policy; however, an appeal from a Title IX determination regarding responsibility or from dismissal of a formal Title IX complaint shall be resolved within the Title IX complaint resolution process and shall not constitute a grievable issue under the SHRA Grievance Policy.

In grievances involving Disciplinary Actions imposed based upon the Title IX complaint resolution process, the hearing panel may receive as evidence the Title IX record. Any Title IX determination(s) of responsibility is not subject to review. The grievance review shall be limited to the question of whether the Disciplinary Action is supported by just cause.

2. Faculty

In proceedings under Section 603 of *The Code* involving imposition of serious sanctions based upon the Title IX complaint resolution process, the Title IX record may be included as evidence of the grounds for the Disciplinary Action; however, the Title IX determination(s) of responsibility is not subject to review. The review shall be limited to the question of whether the recommended Disciplinary Action is supported by clear and convincing evidence.

3. EHRA Employees

Any appealable issue within the Title IX complaint resolution process shall be resolved through the Title IX complaint resolution process. Such appealable issues, and Title IX determinations of responsibility, are not grievable under Section 611 of *The Code*.

Nothing shall interfere with the University's ability to discontinue an at-will employment.

XVI. APPEALS

A. Employee Respondents

The Complainant and employee Respondent may appeal in writing to the University Official the following:

- the hearing body's decision regarding responsibility or
- a dismissal described under Section IX.B. of the Policy.

The written statement must include a detailed rationale for any bases of appeal and be delivered to the University Official within 5 calendar days of receipt of the hearing body's written determination. Permissible bases for appeal are limited to procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or that any Title IX personnel, investigator, hearing body, or decision-maker had a conflict of interest or bias that affected the outcome of the matter. The decision of the University Official (or designee) shall be final.

Appeals of Disciplinary Actions shall be handled in accordance with the applicable disciplinary policy (if any) and are not a part of the Title IX complaint resolution process.

B. Student Respondents

1. Code of Student Conduct-Appeal Responsibility Decision and Sanction

Respondents and Complainants may appeal in accordance with the Code of Student Conduct.

2. Appeal of a Dismissal

The Complainant and Respondent may appeal in writing, to the University Official's designee, a dismissal described under Section IX.B. of the Policy. The written statement must include a detailed rationale for any bases of appeal and be delivered to the University Official's designee within 5 calendar days of receipt of the dismissal notice.

Permissible bases for appeal are limited to procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or that any Title IX personnel, investigator, hearing body, or decision-maker had a conflict of interest or bias that affected the outcome of the matter. In consultation with the Office of General Counsel, the University Official shall appoint a designee to make a determination about the appeal. The decision of the University Official's designee shall be final.

XVII. CONFIDENTIALITY

The University shall respect the privacy of students, employees, and individuals reporting or Respondents to the extent reasonably possible. Confidentiality may not be maintained in circumstances where the law requires disclosure of information or when disclosure required by the University outweighs protecting the rights of others.

Anonymous and non-anonymous reports are acceptable for informational purposes and to include in statistics, even if the victim does not want to pursue criminal charges against the alleged perpetrator or if the report is not made by the victim. The reporter is encouraged to initially provide as much information and evidence as possible, even if s/he does not wish to pursue criminal charges, in the event that the victim later decides to pursue criminal charges. Regardless of whether the victim files charges, the University is under an obligation to pursue steps to limit the effects to the Complainant and campus of any Prohibited Sexual Conduct and to prevent recurrence.

Where a reporting party requests that their name or other identifiable information not be shared with the Respondent or that there be no investigation or adjudication, the University, will balance this request with several factors to determine whether it will move forward with the case. Some of the factors in reaching a determination about whether the request can be honored may include, but not be limited to the following:

- the nature and scope of the alleged conduct, including whether the reported misconduct involves the use of a weapon, violence, or the threats of such;
- the risk posed to any individual or to the campus community by not proceeding;
- whether there have been other reports of misconduct committed by Respondent;
- the Complainant's wish to pursue the University Title IX process; or
- whether the University is required by law to release information.

The University's ability to fully investigate and respond to a report may be limited if the reporting party requests that their name not be disclosed to the Respondent or declines to participate in an investigation.

XVIII. FALSE CLAIMS

An individual who knowingly makes materially false allegations or who knowingly provides materially false information in an investigation or proceeding, shall be subject to disciplinary action, up to and including dismissal, expulsion, or discharge.

XIX. RECORDS

The Title IX Coordinator shall maintain all records related to training materials, investigations, Supportive Measures, remedies, Informal Resolution, Title IX complaint resolution, discipline or other punitive action, or appeal related to allegations of Prohibited Sexual Conduct until seven (7) years after the conclusion of the Title IX complaint resolution.

XX. CONFLICT OF INTEREST/BIAS

Any individual designated as an advisor may not have a conflict-of-interest. Any person designated as a Title IX Coordinator (or deputy), Administrative Investigator, University Official (or designee), Title IX complaint resolution decision-maker or hearing panel/body member, or any person the University designates to facilitate an Informal Resolution may not have a conflict-of-interest or bias for or against a Complainant or Respondent generally or an individual Complainant or Respondent.

XXI. PROCEDURES

The University shall implement procedures to carry-out the functions of this Policy, including, but not limited to, procedures for notice, investigations, Informal Resolution, and Formal Resolution. All such procedures shall comply with requirements of the Title IX Regulations [34 CFR § 106].