

# FAYETTEVILLE STATE UNIVERSITY

## PROHIBITED SEXUAL CONDUCT COMPLAINT RESOLUTION PROCESS

<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 August 2023
<b>Related Policies/ Regulations/Statutes</b>	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)] Unlawful Discrimination, Harassment and Retaliation Policy
<b>Contact for Information:</b>	Office of Risk and Compliance - (910) 672-1043 Title IX Coordinator - (910) 672-2325 Division of Legal, Audit, Risk and Compliance - (910) 672-1145

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### I. PURPOSE

The Prohibited Sexual Conduct Complaint Resolution Process (*Complaint Resolution Process*) serves as a companion to Fayetteville State University's (University) Prohibited Sexual Conduct policy (Policy). The *Complaint Resolution Process* outlines the specific procedures used to resolve Formal Complaints under the Policy.

### II. DEFINITIONS

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

**Complaint Resolution Process** is defined as the University's Title IX procedures for resolving Formal Complaints of Prohibited Sexual Conduct. The Complaint Resolution Process outlines the process for filing of Formal Complaints, preliminary reviews of the Formal Complaints, investigations, hearings, informal resolution proceedings, imposition of sanctions and/or remedial actions, and appeals.

**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). 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. 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.

**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.

**Formal Complaint** is defined as the official, written form 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. The official Formal Complaint form may be obtained from the Title IX Coordinator.

**Hearing Officer** is defined as a person or persons appointed by the University to oversee a hearing and to render a determination of responsibility regarding the allegations in a Formal Complaint. A Hearing Officer may be an employee of the University or a person from outside the University engaged specifically for this function.

**The Office of Risk and Compliance** is defined as the University's unit responsible for overseeing the *Complaint Resolution Process*.

**Parties** is a collective term used to describe both the Complainant(s) and Respondent(s) named in a Formal Complaint

**Prohibited Sexual Conduct** is defined as Relationship Misconduct, Sexual Harassment and Sexual Misconduct.

- **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.
- **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 Consent of the victim, including instances where the victim is incapable of giving Consent. Such misconduct includes the following:
  - **Fondling**  
The touching of the private parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving 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 Consent of the victim.
  - **Statutory Rape**  
Sexual intercourse with a person who is under the statutory age of being able to give Consent.

**Respondent** is defined as an individual who has been reported to have engaged in conduct that could constitute Prohibited Sexual Conduct.

**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. 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, restrictions on contact between students (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.

**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);
- **Vice Chancellor (excluding academic units)** (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. FILING OF FORMAL COMPLAINTS

A Complainant or the Title IX Coordinator may file a Formal Complaint at any time by submitting an official Formal Complaint form that is physically or electronically signed by the Complainant or Title IX Coordinator, that alleges Prohibited Sexual Conduct, and that makes a request that the University investigate the allegation(s). The Formal Complaint may be submitted through any of the following mechanisms:

- By hand-delivering, mailing, or otherwise transmitting the Formal Complaint to the Title IX Coordinator;
- By emailing the Formal Complaint to [TitleIX@uncfsu.edu](mailto:TitleIX@uncfsu.edu); or
- Through any other means that results in the Title IX Coordinator receiving the Complainant's signed Formal Complaint.

Within fourteen (14) calendar days of receiving or filing a Formal Complaint, the Title IX Coordinator shall submit the Formal Complaint to the Office of Risk and Compliance. Unless dismissed as outlined in Section VII, as soon as practical after receipt of the Formal Complaint, the Office of Risk and Compliance shall provide formal written notice to all known Parties. Such notice shall include the following:

- a copy of the *Complaint Resolution Process*;
- the allegations potentially constituting Prohibited Sexual Conduct, including information known at the time about the identities of the Parties involved, the conduct allegedly constituting Prohibited Sexual Conduct, and the date and location of the incident (if known); and
- any other pertinent information.

Should additional allegations arise after the original notification to the Parties, the Office of Risk and Compliance will supplement the notification to the Parties.

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

Upon receipt of a Formal Complaint, the Office of Risk and Compliance will conduct a preliminary review of the Formal Complaint to determine whether any of the following is applicable:

- the conduct is alleged to have occurred in the United States;
- the conduct is alleged to have occurred in an Education Program or Activity; or
- the Formal Complaint alleges facts that, if true, may constitute a violation of the University's Prohibited Sexual Conduct policy.

When the preliminary review of the Formal Complaint indicates the allegations within the Formal Complaint must be dismissed even if all the facts alleged are true, the Office of Risk and Compliance must dismiss the Complaint consistent with Section VII of these procedures.

#### **V. INFORMAL RESOLUTION PROCESS**

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 (Informal Resolution Process) facilitated by the University. The Informal Resolution Process allows the Parties an opportunity to resolve the issue without a formal hearing. The Informal Resolution Process will be facilitated by a trained, neutral facilitator provided by the University. The facilitator may be a University employee or an external third-party. No determination regarding a Prohibited Sexual Conduct Policy violation will result from the Informal Resolution Process.

Prior to agreeing to participate in the Informal Resolution Process, the Parties will receive information regarding the allegations, the parameters of the Informal Resolution Process, and the Parties' right to withdraw from the Informal Resolution Process and resume the *Complaint Resolution Process*. To have an Informal Resolution Process, both Parties must agree, in writing, to participate.

If the Parties reach an agreement during the Informal Resolution Process, the Parties will sign a resolution agreement outlining the terms agreed upon by the Parties. The resolution agreement will be binding. Any written agreement will not become effective until the University approves it in writing. The University may decline to accept a resolution agreement and return the issue to Informal Resolution Process or resume the Complaint Resolution Process. Any breach to any terms identified in the signed resolution agreement may result in disciplinary action.

In certain cases, informal resolutions can be completed in fewer than 30 days. However, large, or complex resolutions may take much longer to complete.

#### **VI. ADVISORS**

Each Party may, at their own expense, have an advisor (Advisor) of their choice, who may be, but is not required to be an attorney. The Advisor may attend any interviews or meetings related to the *Complaint Resolution Process* that the Party whom the Advisor is advising is attending. The Advisor may not actively participate in interviews and may not serve as a proxy for the Party.

At a hearing, an Advisor may conduct cross-examination of the other Party and any witnesses; otherwise, the Advisor may not actively participate in the hearing. Questions asked by the Advisor must be posed in a respectful, non-intimidating, and non-abusive manner.

If a Party does not have an Advisor for a hearing, the University will provide, without fee or charge to that Party, an Advisor of the University's choice.

An Advisor must complete and sign documentation related to the Advisor's understanding of the Advisor's role in the *Complaint Resolution Process* to include, but not be limited to, acknowledging that the Advisor may not unreasonably delay or disrupt the process.

Students have additional rights and responsibilities as outlined in the Code of Student Conduct Section IV. C. (e) Participation of Attorneys or Non-Attorney Advocates in hearings with the Administrative Hearing Body.

## **VII. FORMAL COMPLAINT DISMISSALS/APPEALS**

### **A. Types of Dismissals**

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

#### **1. Mandatory Dismissal**

As required by law, a Formal Complaint shall be dismissed if the conduct alleged in the Formal Complaint meets one or more of the following:

- a. the conduct would not constitute Prohibited Sexual Conduct even if proved;
- b. the conduct did not occur in the University's Education Program or Activity; or
- c. the conduct did not occur against a person in the United States.

#### **2. Discretionary Dismissal**

The University may dismiss the Formal Complaint, or any allegations contained in the Formal Complaint, if at any time during the *Complaint Resolution Process* the following occurs:

- 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 the 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.

### **B. Notice of Dismissal**

If the Formal Complaint is dismissed under this Complaint Resolution Process, the Office of Risk and Compliance will provide a simultaneous Notice of Dismissal of Formal Complaint to the Parties in writing with the reason for the dismissal.

**C. Effect of Dismissal**

The dismissal of a Formal Complaint under the *Complaint Resolution Process* does not preclude action under another University policy such as the Code of Student Conduct or the Non-Discrimination Policy.

**D. Appeal of Decision to Dismiss**

Either Party may appeal the decision to dismiss a Formal Complaint as outlined in the Appeals section of Appendix A.

**VIII. INVESTIGATING FORMAL COMPLAINTS**

If a Formal Complaint is properly filed and not dismissed as described in Section VI or otherwise not resolved through the Informal Resolution Process described in Section V, the Office of Risk and Compliance shall assign an investigator who will be unbiased and free from conflicts of interest, and who will objectively review the Formal Complaint, any evidence, and information from the Parties and witnesses.

During the investigative process, Parties will be treated equitably, will receive notice of the specifics of the allegations as known, and as any arise during the investigation, will receive written notice of the date, time, location, participants and purpose of any investigative interview or meeting and will be provided time to prepare for interviews.

The University shall seek to have investigations complete within ninety (90) calendar days from the issuance of the formal written notice to the Parties. This deadline and all deadlines contained in this *Complaint Resolution Process* may be extended by the University for good cause. The University shall notify the Parties in writing of any such extensions, the reasons for the extension and the projected new timeline.

**IX. FAILURE TO PARTICIPATE**

If the Impacted Party is unable or unwilling to participate in the investigation, the Office of Risk and Compliance will determine whether the investigation shall proceed without the participation of the Impacted Party. If a Respondent chooses not to participate in the investigation after receiving notice of the investigation, the investigation shall still proceed and a disciplinary decision may be reached based on the information gathered during the investigation, even without the Respondent's participation.

**X. INVESTIGATIVE REPORT**

Prior to the conclusion of the investigation, the Investigator shall provide both Parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. The Investigator shall send to each Party and the Party's Advisor the evidence that is subject to inspection and review. The evidence shall be provided in an electronic format or hard copy (the format determined at the sole discretion of the University). The Parties will have ten (10) calendar days after receiving this information to submit a written response which the Investigator will consider prior to completion of the Investigative Report ("Investigative Report"). Evidence subject to the Parties' inspection and review must be made available at any hearing to give each Party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The Investigator shall draft an Investigative Report that summarizes the relevant evidence. The draft Investigative Report shall be sent to each Party and each Party's Advisor, if any, at least ten (10) calendar days prior to a hearing (if a hearing is to be held) in an electronic format or a hard copy. The Parties may review and provide written responses. If written responses are provided, the Investigator shall review the written responses, finalize the Investigative Report, and include the written responses as attachments to the Investigative Report.

Prior to issuing the draft Investigative Report, the Investigator shall consult with the Office of Risk and Compliance and General Counsel.

- A. When the Respondent is an employee, the final Investigative Report shall be sent as a referral sanction to the Hearing Body.
- B. When the Respondent is a student, the final Investigative Report shall be sent to the Office of Student Conduct. The Director of Student Conduct shall provide written notification of the formal charge, if any, to the Respondent. In such a case, the Code of Student Conduct, section B. 3 shall apply.

## **XI. HEARING**

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

- A. Employee hearing procedures are included as Appendix A.
- B. Student hearing procedures are included in the Code of Student Conduct.

## **XII. APPEALS**

Appeals of dismissals or determinations are handled in accordance with Appendix B.

## **XIII. CONFIDENTIALITY**

Complete confidentiality cannot be guaranteed during the *Complaint Resolution Process* as information about Prohibited Sexual Conduct may be shared with others when necessary to investigate or address the prohibited conduct or to prevent its recurrence.

## **XIV. 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.

## **XV. 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.



**XVI. RECORDS**

The University shall maintain records related to the *Complaint Resolution Process* for a period of seven (7) years after the conclusion of the *Complaint Resolution Process*.

**XVII. 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), Investigator, Hearing Officer, Appeals Officer, 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.

## APPENDIX A

### HEARING PROCEDURES AND SANCTIONS FOR EMPLOYEE RESPONDENTS

#### Notification

At least ten calendar (10) days prior to the hearing, each Party shall receive written notice of the allegations, the name of the Hearing Officer, and the date(s) of the hearing.

#### Hearing Officer

1. The Office of Risk and Compliance has the discretion to appoint a trained University employee or an external adjudicator to serve as the Hearing Officer. THE OFFICE OF RISK AND COMPLIANCE will appoint a Hearing Officer who does not have a conflict of interest or bias that would prevent the Hearing Officer from remaining neutral.
2. Either Party must notify the Office of Risk and Compliance within five (5) days of delivery of the notice of the allegations 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 a fair hearing. The Office of Risk and Compliance may remove or re-appoint a Hearing Officer if deemed necessary to address a reported conflict of interest or bias.
3. A Respondent, Complainant, Advisor, or Support Person should not engage in ex-parte communications with the Hearing Officer.
4. Prior to the hearing, the Hearing Officer may ask the Parties whether they are able to stipulate or agree to any undisputed facts to enter into the record to expedite the hearing.

#### Hearing

1. Hearing Order - The sequence of a Hearing shall be as follows:
  - a. The Hearing Officer shall 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 shall 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 shall allow the Parties to make a short, opening statement summarizing their cases.
  - d. The Complainant shall present their case, including any fact and expert witnesses. The Hearing Officer and Respondent's Advisor may question the Complainant and witnesses following each of their respective testimonies.
  - e. The Respondent shall present their case, including any fact and expert witnesses. The Hearing Officer and Complainant's Advisor 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, shall wait to be informed by the Hearing Officer whether the question is permitted in the hearing before responding.
  - h. The Parties 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.
2. Rules of Decorum - The following Rules of Decorum are to be observed in the hearing and applied equally to all Parties, Advisors, witnesses and others in attendance:
- a. 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 exclude any person, including a Party, who disrupts a hearing or fails to follow procedures.
  - b. The University shall record hearings. Other recordings or broadcasts are prohibited. The recording will be maintained with the Respondent's case file and will be available to the employee as part of their personnel file, to the student as a part of their educational record and to the Parties for consideration during any appeal.
  - c. Questions must be conveyed in a neutral, respectful tone.
  - d. Only the Complainant or Respondent may raise objections to the relevance of testimony or evidence. Parties must direct objections to the Hearing Officer, who will determine whether the testimony or evidence is relevant and admissible or irrelevant and, thus, inadmissible.
  - e. The Hearing Officer shall have sole discretion to determine Rules of Decorum violations. The Hearing Officer will notify the offending person of any violation of the Rules. Upon a second or further violation, the Hearing Officer may remove the offending person or allow them to continue participating in the hearing or other part of the process.
  - f. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
3. Failure to Appear - 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 the hearing.
4. Hearing Officer – The following includes duties/responsibilities associated with the Hearing Officer:
- a. 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 an Advisor's question, 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 may provide additional reasons for the exclusion of information after the hearing concludes.
  - b. The Hearing Officer will also provide for the appropriate supervision of the proceedings to ensure adherence to the Rules of Decorum and prohibit participating individuals from abusive or intimidating actions.
  - c. 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.
  - d. The Hearing Officer may allow allegations against multiple employees involved in the same incident to be consolidated and considered in a single hearing.

5. Parties and Witnesses – The following shall be applicable to Parties and witnesses:
  - a. 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.
  - b. The Parties and/or the Hearing Officer may request the attendance of witnesses. No witness may be compelled to provide testimony.
  - c. Witnesses will 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.
  - d. Parties and/or witnesses will be provided the opportunity to provide additional or clarifying information pertaining to the Investigative Report at the hearing.
  - e. Witnesses, other than the Complainant, Respondent, and investigators shall be excluded from the hearing during the testimony of other witnesses. Witnesses may not discuss the testimony they provided with other witnesses.
  - f. The Investigator for the case and/or University Police may be called as a witness by either Party or the Hearing Officer and may provide witness testimony as allowed regarding their investigatory fact findings.
  
6. Evidence – The following is applicable to evidence presented at the hearing:
  - a. The University will make all directly related evidence available to the Parties at the hearing.
  - b. Formal rules of evidence or civil procedure shall not apply in hearings.
  - c. Relevant evidence and questions do not include the following categories, which are deemed “irrelevant” at all stages of the *Complaint Resolution Process*:
    - i. 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; and
    - ii. Evidence and questions that constitute or seek disclosure of information protected under a legally recognized privilege.
  
7. Determination of Responsibility
  - a. The Hearing Officer shall determine responsibility based on the allowable information contained in the record and presented at the hearing.
  - b. The standard of evidence shall be the preponderance of the evidence. This means that the Hearing Officer will determine whether, based on the evidence, it is “more likely than not” that the Respondent engaged in the alleged conduct and therefore violated the Prohibited Sexual Conduct Policy.
  - c. The Hearing Officer shall render a final determination regarding responsibility of the Respondent for the allegations in the formal complaint. This written determination shall include:
    - i. Identification of the allegations potentially constituting sexual harassment.
    - ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
    - iii. Findings of fact supporting the determination.

- iv. Conclusions regarding the application of the University's policy to the facts.
  - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.
  - vi. Any referral sanctions and a description of possible employment discipline.
  - vii. Whether the University will provide Complainant remedies designed to restore or preserve equal access to the Education Program or Activity.
  - viii. The procedures and permissible bases for the parties to appeal.
- d. Within thirty (30) business days of the hearing, the Hearing Officer's written decision 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 the Title IX Coordinator and the Director of Student Conduct (students).
  - e. The Hearing Officer shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.

## **8. Referral Sanctions**

The sanction resulting from a Hearing Officer's finding an employee responsible for a violation of the *Prohibited Sexual Conduct Policy* shall be a "Referral Sanction." A Referral Sanction is defined as a Hearing Officer's sanction of referring a finding of responsibility, along with possible disciplinary actions, to the University Official for consideration of appropriate disciplinary action. When the Parties' options for appeal of the Hearing Officer's decision have been exhausted, the Hearing Officer will forward a copy of the decision sent to the Parties, a Referral Sanction, and the record of the *Complaint Resolution Process* to the University Official. The Hearing Officer will also forward a copy of the Referral Sanction to the Parties and the Title IX Coordinator.

Following receipt of a Referral Sanction, the University Official may issue employment discipline in accordance with the applicable employment policy. Disciplinary actions are not a part of the *Complaint Resolution Process*. The University will adhere to *UNC System Regulation 1300.11* in imposing disciplinary action following a *Complaint Resolution Process*. Employment discipline that may be considered shall be governed by the applicable University policies that pertain to the affected employee. Employment discipline is not considered a part of this *Complaint Resolution Process*.

## APPENDIX B

### APPEALS

#### A. Appeals of Hearing Officer Decisions in Cases against Student Respondents

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

#### B. Appeals of Dismissals of Complaints against Students or Employees and Hearing Officer Decisions for Employee Respondents

The decision-maker's written decision shall include a statement regarding the rights of the Parties to appeal either of the following:

- the Hearing Officer's determination regarding responsibility; or
  - a dismissal of a Formal Complaint (or any allegations therein) based on one or more of the grounds outlined below.
- a. Grounds for Appeal - Either Party may appeal based on one or more of the following grounds:
- i. Procedural irregularity that affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
  - iii. 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.
- b. Time Period for Filing - Any appeal should be directed to the Office of Risk and Compliance, 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 the tenth (10th) calendar day falls on a Saturday, Sunday, University holiday or official date of closure, the deadline for filing the appeal will be extended to the next University business day. If no timely appeal is filed, the decision-maker'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 Office of Risk and Compliance to grant or deny such requests.
- The opposing Party shall have ten (10) calendar days from receipt of the notification of appeal from the Office of Risk and Compliance to provide a written statement regarding the appeal.
- c. Written Appeal - The appeal must contain the following:
- i. A copy of the decision being appealed;
  - ii. 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;
  - iii. A requested remedy; and
  - iv. The signature of the appellant and date the appeal is being submitted.

- d. Appeal Officer - Upon receipt of an appeal and any written statement from the opposing party to the appeal, the Office of Risk and Compliance 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 Office of Risk and Compliance. The Office of Risk and Compliance will send a notice to both Parties identifying the Appeal Officer. Either Party must notify the Office of Risk and Compliance within five (5) calendar 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 Office of Risk and Compliance shall have the discretion to remove or re-appoint an Appeal Officer if deemed necessary to address a reported conflict of interest or bias.

The Office of Risk and Compliance 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 decision-maker is alleged to have committed a procedural error in violation of the *Complaint Resolution Procedures*, the Appeal Officer may ask the decision-maker 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 shall become a part of the record.

- e. Appeal Officer's Determination - The Appeal Officer will review the appeal documentation and any other information required (i.e. 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 sixty (60) business 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.
- i. The Appeal Officer should:
- a) Affirm the findings imposed by the decision-maker; or
  - b) Remand the case to the decision-maker based on either of the following:
    1. procedural error(s) that affected the outcome of the proceeding; or
    2. 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; or
    3. Remand the case to a new decision-maker if the Appeal Officer finds that the decision-maker 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.

The Appeal Officer's determination shall be final.