

The slide features a central white diamond shape with a thin white border, set against a light gray background. The background is decorated with overlapping geometric shapes in yellow and blue, including squares and diamonds, some of which are partially cut off by the edges of the slide. The text is centered within the white diamond.

# Title IX Panel Orientation

July 27, 2021

Ms. Leila Faranesh, Associate Dean of Students and  
Director of the Office of Student Rights and  
Responsibilities



Potential Violations

Hearing Board

Determination of Responsibility

Opportunity to Appeal

Reasons for Appeal

Appeal Route Based on Sanction



# Types of Violations

Violation	University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct	Title IX Compliance and Resolution Regulation
Sexual Assault	Yes	Yes
Dating & Domestic Violence	Yes	Yes
Stalking	Yes	Yes
Sexual Exploitation	Yes	No
Sexual Harassment	Yes (currently not defined)	Yes

# Sexual Assault

- 2.3. Sexual Assault is an offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting system of the Federal Bureau of Investigation including:
  - 2.3.1. Rape is defined as the carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - 2.3.2. Sodomy is defined as oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - 2.3.3. Sexual Assault with an Object is defined as the use of an object to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her youth or because of age or because of mental or physical incapacity.
  - 2.3.4. Incest is defined as nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - 2.3.5. Fondling is defined as the touching of the private body 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 youth or because of age or because of his/her temporary or permanent mental incapacity.
  - 2.3.6. Statutory Rape is defined as sexual intercourse with a person who is under the statutory age of consent. The age of consent in North Carolina is sixteen.

\*Definition taken from University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct

# Sexual Exploitation

- 2.5. Sexual Exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other Related Misconduct offenses in this Regulation. Examples of sexual exploitation include but are not limited to any of the following:
  - 2.5.1. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give Consent to sexual activity;
  - 2.5.2. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or live streaming of images);
  - 2.5.3. Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including, but not limited, to genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
  - 2.5.4. Recording or photographing private sexual activity and/or a person's intimate parts (including, but not limited, to genitalia, groin, breasts or buttocks) without consent;
  - 2.5.5. Disseminating or posting images of private sexual activity and/or a person's intimate parts (including, but not limited, to genitalia, groin, breasts or buttocks) without consent;
  - 2.5.6. Prostituting another person;
  - 2.5.7. Engaging in sexual abuse or the taking advantage of a minor in order to profit from them or otherwise benefit oneself or any person, or in exchange for anything of value (including monetary and non-monetary benefits); or
  - 2.5.8. Knowingly exposing another person to a sexually transmitted infection or virus without the other's consent.

\*Definition taken from University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct

# Dating and Domestic Violence

- 2.6. Dating and Domestic Violence.
  - 2.6.1. Dating Violence 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 Complainant. The existence of such a relationship shall be determined based on the party's statements and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.
  - 2.6.1.1. A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.
  - 2.6.2. Domestic Violence is defined as a felony or misdemeanor crime of violence committed:
    - 2.6.2.1. By a current or former spouse or intimate partner of the victim;
    - 2.6.2.2. By a person with whom the victim shares a child in common;
    - 2.6.2.3. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
    - 2.6.2.4. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
    - 2.6.2.5. 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 the jurisdiction in which the crime of violence occurred.

\*Definitions taken from University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct

# Stalking

- 2.7. Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to: fear for the person's safety or the safety of others; or suffer substantial emotional distress.
  - 2.7.1. Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
  - 2.7.2. Reasonable person is defined as a reasonable person under similar circumstances with similar identities to the victim.
  - 2.7.3. Substantial emotional distress is defined as significant mental anguish that may, but does not necessarily require medical or other professional treatment or counseling.

\*Definition taken from University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct

# Sexual Harassment

- 2.7. Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:
  - 2.7.1. An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - 2.7.2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
  - 2.7.3. Sexual assault, Dating violence, Domestic violence, or Stalking, as defined by this Regulation.

\*Definition taken from Title IX Compliance and Resolution Regulation



## University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct

### Jurisdiction

This Regulation applies to Students who are registered or enrolled for credit- or non-credit-bearing coursework (“Students”); University employees, consisting of all faculty, and staff, (“Employees”); and contractors, vendors, visitors, volunteers, guests or other third parties (“Third Parties”) such as Student applicants. This Regulation does not apply to students of the ECU Community School.

## Title IX Regulation

### Jurisdiction

The allegation of misconduct must be made against an individual present within the United States; The allegation of misconduct must occur within the University's education program or activity including locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the allegation occurs. This includes any building owned or controlled by a student organization recognized by the University.



Procedures are the same for both regulations

# The Hearing



Hearing should occur within 60 business days of receiving the report. The parties must receive 10 business days notice prior to the hearing date.



The hearing must be live. This can include the use of technology.



If a party does not attend, the hearing may still proceed.



Investigator will be present


# Who is Present at the Hearing?

- Hearing Panel
  - 3 Faculty or Staff. One person will serve as hearing chair.
- Hearing Advisor
  - An OSRR staff member will serve as the hearing advisor and is present to ensure the hearing process is followed
- Respondent
- Complainant
- Witnesses
  - OED Investigator
  - Incident Witnesses
  - Character Witnesses (Sanction Phase)
- Student Advisor
  - The respondent and complainant will be provided a student advisor that will conduct cross-examinations. The student may provide their own advisor which can be an attorney.
- Support Person
- OSRR Liaison
- Office of University Counsel
- Director of Equal Opportunity and Title IX





# Student Advisors

- Both the Complainant and the Respondent have the right to be represented, at the respective party's expense, by a licensed attorney or non- attorney advocate
  - The University reserves the right to remove any individual whose actions are disruptive to the proceedings.
  - If a party does not have an advisor, the University will provide a trained advisor at no cost to the party.
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# Cross-Examinations

- Each party's advisor shall cross-examine the other party and any witness.
- If a party or witness does not submit to cross-examination at the hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; Further, the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- All questions will be vetted by the panel prior to being posed by the advisors. All follow up questions will also be vetted prior to being posed. The panel must provide a rationale for any questions that are determined not to be relevant.

# Determinations



Once all relevant information and evidence has been presented at the hearing including both inculpatory and exculpatory evidence, the Hearing Board will conclude the live hearing and enter into deliberations. The Hearing Board may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness.



Preponderance of Evidence is the standard of evidence used in student hearings.



# Prior Sexual History

- The sexual history of a Complainant will never be used to prove character or reputation.
- Can be considered in limited circumstances.
  - For example, if the existence of Consent, as defined in the regulation, is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether Consent was sought and given during the incident in question.
- However, even in the context of a relationship, Consent to one sexual act does not, by itself, constitute Consent to another sexual act, and Consent on one occasion does not, by itself, constitute Consent on a subsequent occasion.
- In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the complaint.

# Notice of Determination

Within fifteen (15) business days of the hearing, the Director of OSRR or designee will notify in writing (which may include email) simultaneously the Complainant, the Respondent, and the Title IX Coordinator/Associate Provost for Equity and Diversity or designee of the Hearing Board's determination. The determination will include:

- Identification of the allegations constituting Title IX Conduct or Related Misconduct;
- 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;
- Findings of fact supporting the determination;
- Conclusion regarding the application of the Regulation and Student Code of Conduct to the facts;
- A statement of, and rationale for, the result as to each allegation including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant;
- The University's procedures and permissible basis for the Complainant and Respondent to appeal.



# Impact Statements

- The Respondent and Complainant may also present impact and/or mitigation statements to OSRR once they have been notified of the outcome of the determination of responsibility which will be presented to the Board for consideration during the sanctioning decision.
- Impact and Mitigation Statements. Where there is a finding of responsibility on one or more of the allegations made by the decision makers following the hearing, both parties may submit a statement to OSRR for consideration in determining an appropriate sanction(s).
- OSRR will ensure that each of the parties has an opportunity to review any statement submitted by the other party. OSRR will provide any statement(s) with the Final Investigation Report, the Hearing Board Determination and the parties' other written submissions to the Vice Chancellor for Student Affairs, or delegee to review in the determination of the appropriate sanction.

# Sanctioning

In determining the appropriate sanction(s), the Hearing Board will be guided by a number of considerations, including:

- The severity, persistence or pervasiveness of the Title IX Conduct or Related Misconduct;
- The nature or violence (if applicable) of the Title IX Conduct or Related Misconduct;
- The impact of the Title IX Conduct or Related Misconduct on the Complainant;
- The impact or implications of the Title IX Conduct or Related Misconduct within the University community;
- Prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history, at the University or elsewhere, and any criminal convictions;
- The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; and
- Any other mitigating, aggravating, or compelling factors.

# Possible Sanctions

- The University reserves the right to issue any of the following sanctions in connection with a determination of responsibility for any charges associated with the Student Code of Conduct. Possible sanctions include, but are not limited to, warning, probation, suspension, expulsion, community service, educational task, counseling, no-contact ban, restricted privileges, restitution, revocation of degree, failure to comply with sanctions, and/or deferred suspension.
- OSRR shall prepare the case record and sanction recommendations to the Hearing Board for consideration in determining appropriate sanctions based on the determination of responsibility and any impact/mitigation statements submitted by the parties.
- Expulsion - In the event the Hearing Board believes expulsion from the University is the appropriate sanction, they will make a recommendation to the Vice Chancellor for Student Affairs or designee who will make the final determination regarding sanctions.
- Consultation on Sanctioning. The Hearing Board may consult with other administrators or campus offices as needed, including, but not limited to, the Director of OSRR, and the Title IX Coordinator/Associate Provost for Equity and Diversity or designee, to ensure that any sanction/disciplinary action is appropriate for the violation.

# Appeals

- Either party may appeal the determination of responsibility
- Either appealing party has the burden of showing;
  1. Violation of Due Process
  2. Material Deviation from Substantive and Procedural Standards Substantive and Procedural Standards require that the decision reached be neither arbitrary nor capricious.
  3. 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.
  4. 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 the individual complainant or respondent that affected the outcome of the matter.

# Appeals (Continued)

- Where a Complainant or Respondent has appealed a determination by the Hearing Board, the Director of OSRR or designee, will compile the written record and provide it to the Vice Chancellor for Student Affairs or designee to make the final determination. This record will include the written statement in support of or challenging the outcome submitted by the parties.
- The Vice Chancellor for Student Affairs will make a final administrative decision within 45 calendar days after the hearing is completed. OSRR will notify both parties in writing simultaneously of the final administrative decision and the rationale for the result. This decision is final as to the determination of responsibility.
- Regarding Sanctions, only the Respondent is eligible to appeal.



# Appeal of Expulsion

- If the Vice Chancellor for Student Affairs determines that a Respondent should be expelled, either party has the right to appeal the decision to the East Carolina University Board of Trustees.
  - The appealing party should send a written appeal to the Assistant Secretary to the Board of Trustees within ten (10) business days after the notice of the Vice Chancellor's decision is sent to the Respondent.
  - Once an appeal is received by OSRR, OSRR will notify the non-appealing party in writing of the appeal. OSRR will give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
  - If the appeal is received in a timely manner, the Board of Trustees will establish a schedule for its review. If the appealing party fails to comply with the schedule, the Board of Trustees may dismiss the appeal.
  - The Board of Trustees may affirm the decision of the Vice Chancellor for Student Affairs, reject the decision and remand it to the Vice Chancellor for reconsideration, or reject the decision and overturn the finding of responsibility or modify the sanctions imposed. OSRR will notify both parties in writing simultaneously of the decision of the Board of Trustees and the rationale for the result.
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