

# **RESOURCE GUIDE FOR EMPLOYEES ACCUSED OF TITLE IX CONDUCT OR RELATED MISCONDUCT**

## **Introduction**

The University is committed to providing a safe and non-discriminatory learning, living and working environment for all members of the University community. The University prohibits unlawful discrimination on the basis of sex in any of its education or employment programs and activities. Specifically, this Regulation prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 (“Title IX”). Such behavior also requires the University to fulfill certain obligations under the Violence Against Women Reauthorization Act of 2013 (“VAWA”) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”).

Under the University’s policies, the University prohibits Sexual Assault (hereafter defined as Rape, Sodomy, Sexual Assault with an Object, Incest, Fondling, and Statutory Rape), Dating and Domestic Violence, Stalking, Sexual Harassment, and Sexual Exploitation. These forms of conduct may be unlawful, undermine the character and purpose of the University, and will not be tolerated.

This document is to supplement the University’s *Title IX Compliance and Resolution Regulation* and the *University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct* and is in compliance with the Violence Against Women Amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). This information is provided to inform individuals about their rights and options regarding the Regulation and resources available through both the University and the Greenville community.

The Violence Against Women Amendments to the Clery Act require colleges and universities to inform individuals of their rights and options regarding incidents of sexual assault, domestic violence, dating violence, and stalking. The information provided is not meant to substitute criminal proceedings. Information regarding how to pursue criminal charges can be found in this document, however the University’s Regulations and procedures are not of a criminal nature and there is a fundamental difference between the University’s procedure and a criminal one.

Students, faculty, and staff members who report violations of the regulations will be given a copy of this document and will be advised of all rights and options available to them. This document and the overarching regulations will also be available on the University’s website as a reference.

## **If You Are Accused of Title IX Conduct or Related Misconduct**

### **Common Feelings After Being Named as a Respondent**

Emotional responses will vary from individual to individual. Being accused of Title IX Conduct or Related Misconduct can be traumatic and life changing. It's important to remember that your responses are not crazy; they are normal reactions to a difficult situation - being accused of Title IX Conduct or Related Misconduct. Below are some common feelings you may experience.

#### **Shock and Numbness**

You may experience feelings of disbelief or denial about what happened. You may feel emotionally detached or drained. Other reactions to the emotional shock may include: crying,

anger, laughing nervously, withdrawing, or claiming to feel nothing or be "fine." Often individuals feel overwhelmed to the point of not knowing how to feel or what to do.

Disruption of Daily Life

You may feel preoccupied with thoughts about the incident. It may be difficult to concentrate, attend class, or focus on schoolwork. You may have trouble sleeping, appetite changes, general anxiety, or depression.

Loss of Control

You may feel overwhelmed. You may also feel anxious, scared, or nervous and often have a difficult time concentrating. Decision that previously were made routinely before now may feel monumental.

Fear

You may fear what may happen and how your life may change. You may be afraid of what other peers or family may say about him/her or if there might be retaliation towards him/her. You may find himself/herself not knowing who to trust.

Anger

You may have different reasons to feel angry. You may vary in how you express anger. Anger can be vented in safe and healthy ways, or can be internalized, where it may become irritability, anxiety, or depression. Please be careful to avoid unhealthy ways of coping with anger such as alcohol or drug use, cutting, or other self-destructive behavior.

Isolation

You may isolate yourself in fear of rumors or retaliation. You may not want to bother anyone because of embarrassment and fear of others judging you, so you do not talk about the incident or your feelings. Also, you may withdraw or distract themselves from family or friends.

Confidential Emotional Support is available through the Employee Assistance Program (ComPsych) at 833-743-8131. Anything discussed with a counselor is confidential and will not be shared with anyone without your consent.

**Campus and Community Resources**

Please refer to the chart below regarding contact information for reporting and supportive resources.

<b>EMERGENCY, LAW ENFORCEMENT, &amp; MEDICAL RESOURCES</b>			
<a href="#">Greenville Police Department:</a>	Non-Emergency	(252) 329 - 4315	500 S. Greene St.
	Information Desk	(252) 329 - 4317	
<a href="#">Pitt County Sheriff's Office:</a>	Office Hours M - F, 8:00 - 5:00	(252) 902 - 2800	100 W. 3rd St.
	24-hour dispatch	(252) 830 - 4141	
<a href="#">*Vidant Medical Center:</a>	Information	(252) 847 - 4100	2100 Stantonsburg Rd.
	Emergency Department	(252) 847 - 0279	
		(252) 847 - 0191	
	Minor Emergency Department	(252) 847 - 1537	2380 West Arlington Blvd.
<a href="#">Greenville Police Department:</a>	Non-Emergency	(252) 329 - 4315	500 S. Greene St.

UNIVERSITY			
<a href="#">ECU Police Department:</a>	Emergency	911	Blount House
	Non-Emergency	(252) 328 - 6787	609 E. Tenth St.
	East Campus Hotline	(252) 328 - 0062	
	West (Health Sciences) Campus Hotline	(252) 744 - 5080	
<a href="#">ECU CARES:</a>		(252) 737 – 5555	
<a href="#">Title IX Coordinator:</a>	LaKesha Alston Forbes	(252) 328 – 6804	Old Cafeteria Building, Suite G-406
Campus Security Authority:	See list of Campus Security Authorities and their contact information in the Annual Security & Fire Safety Report at <a href="https://www.ecu.edu/cs-admin/police/Police-Department-AnnualSecurityReport.cfm">https://www.ecu.edu/cs-admin/police/Police-Department-AnnualSecurityReport.cfm</a>		
COUNSELING RESOURCES			
ComPsych (Employee Assistance Program)		(833) 743-8183	
COMMUNITY RESOURCES			
<a href="#">*REAL Crisis Intervention:</a>		(252) 758 - 4357	1011 Anderson St.
<i>*Items denoted with * are considered Confidential Resources.</i>			

### **Retaliation Policy**

It is against the University’s Notice of Nondiscrimination to retaliate against individuals who file a complaint. Retaliation is any reprisal, interference, penalty, discrimination, coercion, or harassment of the individual in response to the filing of the complaint.

### **Resolution Options**

Upon receipt of a report, the Office for Equity and Diversity will reach out to the Complainant to discuss options and resources. During the meeting, the Investigator will provide Complainant with information about informal resolution and formal investigative options, as applicable.

Complainants have the right to notify law enforcement and to be assisted by university officials in doing so. It is the Complainant’s right to decide whether or not to involve law enforcement. Declining the involvement of law enforcement does not prevent a Complainant from receiving assistance from the University. Complainant’s also have the right to use the University’s procedures in addition to or independent of filing a criminal complaint.

A Complainant may file a formal complainant with the University to move forward with either Informal Resolution or a Formal Investigation. A formal complaint is defined as a document filed by a Complainant (or signed by the Title IX Coordinator) alleging a violation of Title IX Conduct or Related Misconduct against a Respondent and requesting the University investigate.

### **Informal Resolution**

Informal Resolution includes a variety of informal resolution options. Individuals can choose to resolve concerns via Informal Resolution; however, it must be voluntary and informed by both parties, and the University must receive written consent from both parties to attempt informal resolution. Forms of Informal Resolution that involve face-to-face meetings between the Complainant and the

Respondent, such as mediation, are not available in cases involving Sexual Assault, or Sexual Harassment where the Respondent is an employee and the Complainant is a student.

If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the terms of the agreement are implemented, and the matter is resolved and closed. If an agreement is not reached, and either party determines that a Formal Investigation is preferred, the matter will be referred for Formal Investigation under the procedures. At any time during the Informal Resolution process, any party has the right to withdraw and pursue a Formal Investigation.

### **Formal Investigation**

If a Formal Investigation is requested, the Investigator will provide both parties with notice of the commencement of the investigation and an equal opportunity to be heard, submit relevant information and identify witnesses. The Investigators will conduct a prompt, thorough, fair, and impartial investigation to collect and gather the factual information and evidence available related to the allegations made by the Complainant. Parties have the opportunity to review the evidence gathered during the investigation and provide a response to the investigator. The facts and evidence gathered will be collected and the investigator will prepare a Final Investigatory Report, summarizing the information gathered during the investigative process. No conclusions regarding responsibility or findings will be made during the Formal Investigation process, and no findings or conclusions related to the responsibility or imposition of sanctions shall be included in the Final Investigative Report. Both parties have the opportunity to review the Final Investigative Report before finalization and provide a written response to the investigator.

### Timing of Investigation

The University will endeavor to complete an investigation within sixty (60) business days from the issuance of the Notice of Investigation, generally. Cooperation of the parties and witnesses in the investigation may have a direct impact on the timeframe for the completion of an investigation. Any extensions to the investigative timeline will be communicated with both parties in writing.

### Hearing Process

After the completion of the Final Investigative Report, the Title IX Coordinator or designee will select three trained members of the University community to serve on the Hearing Panel. The live hearing is an opportunity for the parties to address the Hearing Panel, in person or virtually, about the allegations of Title IX Conduct or Related Misconduct. During the hearing, each party has the opportunity to be heard, to identify witnesses, and to respond to questions from the Hearing Panel or the other party's advisor. Each party's advisor shall cross-examine the other party and any witnesses. If a party or witness does not participate in the cross-examination, the Hearing Panel cannot use any statement of the party or witness in determining responsibility.

The Hearing Panel will review all relevant information and evidence presented at the hearing and determine whether, by a preponderance of the evidence (more likely than not), the Respondent violated University policies. Both parties will be notified in writing of the Hearing Panel determination and their right to appeal. If the Hearing Panel determines the Respondent is responsible and the Respondent does not appeal, the matter will be referred to the appropriate Vice Chancellor for sanctioning.

### Appeals

Either party may appeal the determination of responsibility. During an appeal, the party must show one of the following:

1. Procedural irregularity that affected the outcome of the matter;
2. The decision of the panel was unreasonable, erroneous, or arbitrary and not supported by the facts; or
3. New evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter; or
4. The Title IX Coordinator/Associate Provost for Equity and Diversity or designee, investigator, 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.

If either party appeals the Hearing Panel's determination, the matter will be reviewed by an appellate officer who will determine whether to confirm the Hearing Panel's decision or to modify the findings (which may include reversing the Hearing Panel determination). After review, the appellate officer will notify, in writing, both parties of the outcome. If the appellate officer upholds a Hearing Panel decision of responsibility, the matter will be referred to the appropriate Vice Chancellor for review and imposition of any sanctions/disciplinary action.

### Sanctioning

Where disciplinary action is deemed appropriate by the Vice Chancellor upon referral for sanctions, such action may include one or more of the following: training, progressive disciplinary action, restrictions on interactions with students or other members of the ECU community, restrictions on university associated activities, No-Contact Directive(s), transfer or reassignment from position, removal of administrative appointment(s), demotion, suspension without pay, and discharge from employment.

### Advisors

Complainants and Respondents have the right to be represented by a licensed attorney or non-attorney advocate, at the party's own expense, who may accompany them during any meetings with the Office for Equity. If a party does not have an advisor present at the hearing in the Formal Investigation process, one will be provided by the University free of charge to the party. The advisor, chosen by the University, may or may not be an attorney.

### Definitions

The following definitions can be found in the University's *Title IX Compliance and Resolution Regulation* or the *University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct*.

**Complainant** is defined as an individual who is alleged to be the victim of conduct that could constitute a policy violation under this Regulation. Any individual may report alleged conduct however the Complainant or the Title IX Coordinator must sign off on any formal complaint. A parent or legal guardian of minors enrolled in the ECU Community School may file a formal complaint on behalf of a child.

**Respondent** is defined as an individual who has been reported to be the perpetrator of conduct that could constitute a policy violation under this Regulation.

**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:

- **Rape**, which is defined as the carnal knowledge of a person, without the consent of the person, including instances where the person is giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Sodomy**, which 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.
- **Sexual Assault with an Object**, which 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.
- **Incest**, which is defined as nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Fondling**, which 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.
- **Statutory Rape**, which is defined as sexual intercourse with a person who is under the statutory age of consent.

**Consent** is:

- Informed (knowing),
- Voluntary (freely given), and
- Active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed- upon sexual activity.

**Consent** is explicit approval and permission to engage in sexual activity demonstrated by clear actions, words, or writing(s). Consent is informed, freely given, continuing, and mutually understood by all parties involved. If coercion, intimidation, threats, and/or physical force are used to obtain participation or continuing participation, then consent is not present. If the Complainant was mentally or physically incapacitated or impaired so that the Complainant could not understand the fact, nature, and/or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption, or being asleep or unconscious, or under the age of legal consent, or unable to give consent under current law. If a person becomes incapacitated after consent is given, but before the sexual act is initiated or completed, then consent is no longer valid. Silence does not necessarily constitute consent, and past consent of sexual activities does not imply ongoing future consent. Whether the Respondent has taken advantage of a position of influence over the Complainant may

be a factor in determining whether consent was freely given. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Consent can be withdrawn at any time by either party.

**Force** includes (1) the use of physical violence, (2) threats, (3) intimidation, and/or (4) coercion. Consent cannot be obtained by Force.

- **Physical force** means exerting physical control over another person. Examples of physical force include but are not limited to hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.
- **Threats** are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples of threats include, but are not limited to, verbal statements reflecting intent to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
- **Intimidation** is an implied threat that causes reasonable fear in another person. Examples of intimidation include, but are not limited to: destroying property, brandishing a weapon, blocking an exit to cause fear. A person's physical size, alone, may not constitute intimidation; however if the person's size is used in a method to instill fear, it may constitute intimidation.
- **Coercion** includes conduct, intimidation, and express or implied threats of physical or emotional harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to persuade or compel someone to engage in sexual activity. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of sexual activity, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued unreasonable pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

**Incapacitation** means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. A person who is incapacitated is unable, temporarily or permanently, to give Consent because of mental or physical helplessness, temporary or permanent physical or mental health condition, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs. However, the consumption of alcohol and/or drugs does not automatically mean that a person is incapacitated. Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

**University Guidance on Consent and Assessing Incapacitation:**

A person who wants to engage in a specific sexual activity is responsible for obtaining Consent for that activity. Lack of protest does not constitute Consent. Lack of resistance does not constitute Consent. Silence and/or passivity also do not constitute Consent. Relying solely on non-verbal communication before or during sexual activity may lead to misunderstanding and result in a violation of this Regulation.

It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants are encouraged to discuss with one another before engaging in sexual activity. If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue sexual activity.

Consent to one form of sexual activity does not, by itself, constitute Consent to another form of sexual activity. For example, one should not presume that Consent to oral-genital contact constitutes Consent to vaginal or anal penetration. Consent to sexual activity on a prior occasion does not, by itself, constitute Consent to future sexual activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of Consent.

Consent may be withdrawn at any time. An individual who seeks to withdraw Consent must communicate, through clear words or actions, a decision to cease the sexual activity and/or withdraw Consent. However, Consent is automatically withdrawn once an individual becomes incapacitated, if the person seeking to engage in sexual activity knew or should have known that the other person became incapacitated. Once Consent is withdrawn, the sexual activity must cease immediately. In evaluating Consent in cases of alleged incapacitation, the University asks two questions: (1) Did the person initiating sexual activity know that the other party was incapacitated? and if not, (2) Should a sober, reasonable person in the same situation have known that the other party was incapacitated? If the answer to either of these questions is “YES,” Consent was absent and the conduct is a violation of this regulation.

Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person.

One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

One should be cautious before engaging in sexual activity when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs creates ambiguity for either party as to whether Consent has been sought or given. If one has doubt about either party’s level of intoxication, the safe thing to do is to forego all sexual activity.

Being impaired by alcohol or other drugs is no defense to any violation of this Regulation.

**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.

- 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.

**Domestic Violence** is defined as a felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has 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 the jurisdiction in which the crime of violence occurred;
- 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.

**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.

- 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.
- Reasonable person is defined as a reasonable person under similar circumstances with similar identities to the victim.
- Substantial emotional distress is defined as significant mental anguish that may, but does not necessarily require medical or other professional treatment or counseling.

**Sexual Harassment** is defined as conduct on the basis of sex that satisfies one or more of the following:

- (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) 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

- (3) Sexual assault, Dating violence, Domestic violence, or Stalking, as defined by this Regulation.

**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:

- 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;
- 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);
- 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);
- 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;
- 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;
- Prostituting another person;
- 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
- Knowingly exposing another person to a sexually transmitted infection or virus without the other's consent.