

Title IX at ECU

Office for Equity and Diversity



This module contains content, including discussing incidents of sexual harassment, sexual assault, dating and domestic violence, and stalking, that may be triggering to some individuals.

If you feel uncomfortable at any time during this module, please do what you need to take care of yourself. Feel free to log off or contact ECU's Employee Assistance Program.

ComPsych:

- 833-743-8183 or
<https://www.guidanceresources.com/groWeb/login/login.xhtml>
- Company ID: ECUFASAP

The Office for Equity and Diversity

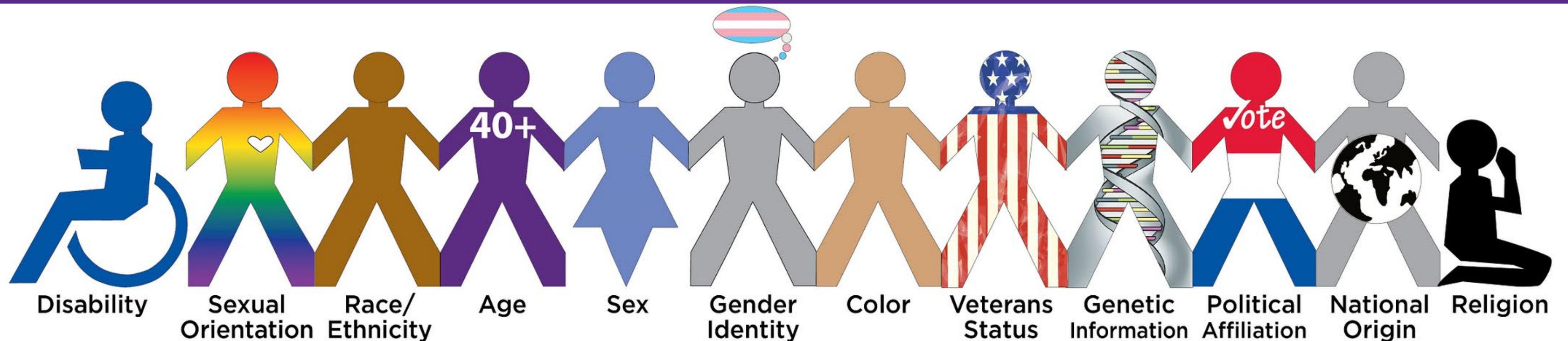
OED provides leadership in the University's efforts to promote a welcoming, equitable, diverse and inclusive environment for students, employees and visitors.

The scope of OED encompasses institutional equity and diversity functions involving education, intervention, compliance, consulting, programming, outreach and assessment.



Equal Opportunity at ECU

East Carolina University (“ECU”) is committed to equality of opportunity and prohibits unlawful discrimination based on the following protected classes: race/ethnicity, color, genetic information, national origin, religion, sex (including pregnancy and pregnancy related conditions), sexual orientation, gender identity, age, disability, political affiliation, and veteran status (including relationship or association with a protected veteran; or Active Duty or National Guard service) (“Protected Class”).



This Module Contains:

Information specific to Title IX at ECU; including:

- The Title IX Coordinator and related contact information;
- The different roles within the Title IX process;
- Title IX jurisdiction;
- Informal Resolution;
- Formal Investigation;
- The process for students;
- The process for employees; and
- A prohibition against retaliation.



Module Learning Objectives

At the conclusion of this module, participants will have a greater understanding of the Title IX grievance process at ECU and their role in the process.



Title IX Coordinator

East Carolina University does not discriminate on the basis of sex in any education program or activity as required by Title IX of the Education Amendments of 1972. This includes admission and employment and individuals may report concerns of sexual harassment or inquiries on the University's application of Title IX to the University's Title IX Coordinator or the United States Department of Education Office for Civil Rights.

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Different Roles in the Title IX Process

Title IX Coordinator

Responsible for coordinating the recipient's responses to all complaints involving possible sex discrimination. This responsibility includes monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate.

Investigator

Conducts a neutral, thorough, fact finding investigation to gather all relevant evidence and compiles that evidence into a report to be utilized by the hearing panel.

Hearing Panel Member

Serves as part of an impartial three-person panel who asks questions and objectively evaluates all relevant evidence presented at the hearing to determine if a violation of university policy has occurred utilizing the preponderance of the evidence standard.

Advisor

Provides support to a party during the hearing by asking any questions on behalf of the party.

Appellate Officer

reviews the information from the hearing and any additional evidence submitted by the parties after a party submits a request for an appeal to determine if there is a reasonable basis for the appeal.

Title IX Jurisdiction

- Sexual harassment must occur “within an education program or activity” against a person in the United States.
 - Includes locations, events, or circumstances over which the recipient exercised “substantial control” over both the respondent and the context in which the sexual harassment occurs.
 - Includes any building owned or controlled by a student organization that is officially recognized by the institution.
 - Does not include study abroad programs.
- Campus Map: <https://www.ecu.edu/maps>
- Events, locations, and circumstances could include athletic events, club events, and instances that occur on campus, in the classroom, or residence halls.





Definitions

Sexual Harassment

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

- 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; 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.

Sexual Assault

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.

Sexual Assault (continued)

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:

- 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.

DEFINITIONS

Domestic Violence

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.

Dating Violence

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.

DEFINITIONS

Stalking

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.



Consent

Informed (Knowing).

Voluntary (Freely Given).

Active (Not Passive).

Consent

- 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.
- 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.

Responsible Employees

A "Responsible Employee" is:

- A person designated as a supervisor of any University employee;
- Persons designated as a Campus Security Authority, with the exception of the University Ombud;
- Any ECU employee responsible for coordinating or supervising clinical education experiences, practicum and/or internships; or
- Any employee or staff member of the ECU Community School.

Responsible Employees must report incidents of Title IX Conduct to the Title IX coordinator and must not attempt mediation with the Complainant and Respondent.



Supportive Measures

The University offers a wide range of resources for Students and Employees, whether as Complainants or Respondents, to provide support and guidance throughout the initiation, investigation, and resolution of a report of Title IX Conduct. The University will offer reasonable supportive measures if requested and reasonably available, regardless of whether or not the event is reported to ECU Police or other law enforcement agencies and regardless of whether a complaining party desires to participate in University disciplinary proceedings or seek criminal charges.



Formal Complaint

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 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.

Overview of Student Respondent Process



Overview of Employee Respondent Process



Formal Investigation

- Whenever a Formal Investigation is commenced, the Title IX Coordinator/ Associate Provost for Equity and Diversity or designee will designate one or more Investigators from the University's Office for Equity and Diversity and/or a qualified external investigator to conduct a prompt, thorough, fair, and impartial investigation.
- All Investigators will receive annual training consistent with the requirements outlined in the Title IX Regulation. The investigators will act to collect and gather the factual information and evidence available related to the allegations made by the Complainant. 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.

Evidence Review

- Both parties, and their advisors, will have the opportunity to review any evidence collected by the investigator prior to the conclusion of the investigation and the investigator issuing a draft of the Final Investigatory Report.
- Both parties, and their advisors, will also have the opportunity to review a draft of the Final Investigatory Report and provide feedback to the investigator prior to the Report being finalized and sent to the applicable hearing body.



Standard of Evidence

- ECU utilizes the preponderance of the evidence standard in determining whether a violation of the Regulation has occurred.
- Meeting the preponderance of evidence standard constitutes a conclusion it is more likely than not that the alleged conduct occurred. This standard will be used to evaluate the evidence for purposes of making findings and drawing conclusions for an investigation conducted under the Regulation.



Hearing

The live hearing is an opportunity for the parties to address the Hearing Board, in person or virtually, about issues relevant to the matter and allegations.

The parties may address any information related to the investigation, and address any supplemental statements submitted in response to the Investigation.

During the live hearing, each party shall be provided the opportunity to be heard, to identify witnesses for the Hearing Board's consideration, and to respond to any questions of the Hearing Board or the other party's advisor.

Sanctions

- In the case of student respondent sanctions, except for the sanction of expulsion, will be determined by the Hearing Board. In the case of expulsion, the Hearing Board will make a recommendation to the Vice Chancellor for Student Affairs and the Vice Chancellor will determine whether to impose the expulsion.
- In the case of employee sanctions, the Hearing Panel will refer the matter to the Vice Chancellor with supervisory authority, for the imposition of sanctions.

Student Appeals

Either party may appeal the determination of responsibility. During an appeal, the appealing party has the burden of showing:

- a violation of due process as defined by the procedures stated in the Regulation and this Appendix A; or
- a material deviation from Substantive and Procedural Standards adopted by the UNC Board of Governors; or
- new evidence that was previously unavailable; or
- conflict of interest or bias of the Title IX Coordinator, investigator or decision-maker.



Employee Appeals

Either party may appeal the determination by the Hearing Panel.

Either party may appeal on the following basis:

- Procedural irregularity that affected the outcome of the matter; or
- The decision of the panel was unreasonable, erroneous, or arbitrary and not supported by the facts; or
- 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
- 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.



Retaliation

ECU prohibits retaliation by any individual.

Retaliation is defined as any act of interference, restraint, penalty, discrimination, coercion, reprisal, intimidation, threats, or harassment against an individual for using applicable policies responsibly (including making a charge of discrimination protected by policy; testifying, assisting, or participating in a hearing, proceeding, review process or investigation of discrimination; opposing an illegal act; requesting a reasonable disability or religious accommodation; or exercising any other right protected by the Notice of Nondiscrimination and Affirmative Action Policy).



**Thank you for completing
this module.**

If you have any questions, please contact the Office for Equity and Diversity at oed@ecu.edu or (252) 328-6804.