



**PROCEDURES FOR REPORTS AGAINST STUDENTS**

INVESTIGATING AND RESOLVING REPORTS UNDER THE TITLE IX COMPLIANCE AND RESOLUTION REGULATION AND THE UNIVERSITY REGULATION ON REPORTS OF PROHIBITED INTERPERSONAL VIOLENCE AND RELATED MISCONDUCT

**Table of Contents**

I.	INTRODUCTION .....	2
II.	REPORTING .....	2
III.	EXPECTATIONS OF COMPLAINANTS AND RESPONDENTS .....	3
IV.	INITIAL ASSESSMENT.....	4
a.	Sexual Misconduct Response Team .....	5
V.	HEALTH AND SAFETY THREAT ASSESSMENT.....	6
a.	University Actions Following Health and Safety Threat Assessment.....	7
i.	Where the Complainant Wishes to Pursue Formal Investigation.....	7
ii.	Where the Complainant Requests Anonymity and/or that an Investigation Not Be Pursued.....	8
b.	Notice to Complainant and Respondent of University Actions .....	9
VI.	UNIVERSITY RESOLUTION.....	10
a.	Informal Resolution.....	10
b.	Formal Investigation.....	11
i.	Investigation .....	11
ii.	Opportunity for Acceptance of Responsibility.....	13
iii.	Hearing Board .....	16
iv.	Sanctioning .....	20
v.	Appeals.....	23
VII.	EXTENSION OF TIMELINES FOR GOOD CAUSE.....	27
VIII.	VICE CHANCELLOR OF STUDENT AFFAIRS SUBSTITUTION.....	27

## APPENDIX A

### 1. Introduction

- 1.1. East Carolina (the “University”) is committed to providing a safe and non-discriminatory environment for all members of the University community. The University prohibits Sexual Harassment pursuant to Title IX, as well as Sexual Assault (Rape, Incest, Forcible Fondling, and Statutory Rape), Dating and Domestic Violence, and Stalking (“Title IX Conduct”). These are defined in the University’s Title IX Compliance and Resolution Regulation (the “Title IX Regulation”). The University also prohibits the above conduct and the University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct (“Misconduct Regulation”). This Appendix identifies the procedures (the “Procedures”) the University follows when it receives a report alleging Title IX Conduct and Related Misconduct by a Student (excluding those matriculating at the ECU Community School, the K-12 school operated pursuant to N.C. Gen. Stat. 116-239.5, et. seq.). The University uses these Procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against Students found responsible for violating the Regulation(s).<sup>1</sup>
- 1.2. Please see Appendix B for Procedures the University follows when it receives a report alleging Title IX Conduct or Related Misconduct by an Employee, including faculty, staff, and administrators.
- 1.3. Please see the Regulation for addressing reports alleging Title IX Conduct or Related Misconduct by an individual who is not a student or employee.

### 2. Reporting

- 2.1. The University encourages anyone<sup>2</sup> who experiences or learns of Title IX Conduct or Related Misconduct and requires Responsible Employees who become aware of an incident of Title IX Conduct involving an Employee or student to *immediately* report the incident to the University through any of the following reporting options:
  - 2.1.1. By contacting the University’s Title IX Coordinator, by telephone, email, or in person during regular office hours:

LaKesha Alston Forbes, Title IX Coordinator  
Office for Equity and Diversity  
Old Cafeteria Building Suite G-406  
Phone: (252) 328-6804  
Email: [oed@ecu.edu](mailto:oed@ecu.edu)

---

<sup>1</sup> These Procedures should be read in conjunction with the Regulation(s). Capitalized terms used and not otherwise defined in these Procedures are defined in the Regulation. For purposes of these Procedures, the following definitions apply: (1) the “Title IX Coordinator” means the Title IX Coordinator, Director of Equal Opportunity and Title IX, and/or any of their respective trained designees; and (2) “Human Resources” means University Human Resources, and/or the Human Resources professional in a particular school/department/unit.

<sup>2</sup> Pursuant to University policy, certain University employees, called “Responsible Employees,” are *required* to report to the Title IX Coordinator or designee all information disclosed to them about an incident of Title IX Conduct.

## APPENDIX A

2.1.2. By completing an online form with the Office for Equity and Diversity at <https://oed.ecu.edu/report/>;

22. A Complainant, as defined in the Regulation, may choose to make a report to the University to pursue resolution under these Procedures and may also choose to make a report to law enforcement. A Complainant may pursue either or both of these options at the same time. As set forth in the Regulations, a Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should contact law enforcement directly:

- 2.2.1. Call 911 (for emergencies);
- 2.2.2. ECU Police Department ((252) 328-6787) (for non-emergencies));
- 2.2.3. Greenville Police Department ((252) 329-4315) for non-emergencies));
- 2.2.4. Pitt County Sheriff's Office ((252) 902-2800) (for non-emergencies)).

23. The University offers access to confidential resources for individuals who are unsure about whether to report Title IX Conduct or Related Misconduct or are seeking counseling or other emotional support in addition to (or without) making a report to the University. The following guides identify confidential resources, both at the University and in the Greenville community, and further explain options for reporting Title IX Conduct or Misconduct to the University and to law enforcement:

- 2.3.1. Students may refer to the [Resource and Reporting Guide for Student Reporting Incidents of Title IX Conduct or Related Misconduct](#) and the [Resource and Reporting Guide for Students Accused of Incidents of Title IX Conduct or Related Misconduct](#) (Appendices A-1 and A-2);
- 2.3.2. Employees may refer to [the Resource and Reporting Guide for Employees Reporting Incidents of Title IX Conduct or Related Misconduct](#) and [Resource and Reporting Guide for Employees Accused of Incidents of Title IX Conduct or Related Misconduct](#) (Appendices B-1 and B-2);
- 2.3.3. Third Parties may contact the Title IX Coordinator/Associate Provost for Equity and Diversity.

24. Complainants are entitled to receive information, assistance and a broad range of supportive measures regardless of whether they choose to pursue criminal and/or University resolution of Title IX Conduct or Related Misconduct. Respondents are also entitled to receive information, assistance and a broad range of supportive measures. The Student and Employee Resource Guides, as referenced in Section 2.3 above, outline these resources and remedial measures and describe how to request them.

### 3. Expectations of Complainants and Respondents

- 3.1. Pursuant to these Procedures, Complainants and Respondents (either of whom is a “party” and collectively, “the parties”) can expect:
  - 3.1.1. Equitable resolution of allegations of Title IX Conduct or Related Misconduct as promptly as possible;
  - 3.1.2. Privacy in accordance with the Regulation and any legal requirements;

## APPENDIX A

- 3.1.3. Reasonably available supportive measures, as described in these Procedures and in the applicable Resource Guide;
- 3.1.4. Freedom from Retaliation for making a good faith report of Title IX Conduct or Misconduct or participating in any proceeding under this Regulation;
- 3.1.5. The responsibility to refrain from Retaliation directed against any person for making a good faith report of Title IX Conduct or Related Misconduct or participating in any proceeding under this Regulation;
- 3.1.6. The responsibility to provide truthful information in connection with any report, investigation, or resolution of Title IX Conduct or Related Misconduct under the Regulation or these Procedures;
- 3.1.7. The opportunity to articulate concerns or issues about proceedings under the Regulation and these Procedures;
- 3.1.8. Timely written notice of any interview, meeting, or proceeding at which the party's presence is contemplated by these Procedures;
- 3.1.9. The right to be represented, at the party's expense by a licensed attorney or non- attorney advocate who may participate in accordance with UNC Policy Manual 700.4.1.1[R];
- 3.1.10. The right to have an advisor or support person, provided by the University if the individual chooses, to who shall conduct any cross-examination of parties and witnesses at any hearing;
- 3.1.11. Written notice of an investigation, including notice of potential Regulation violations and the nature of the Title IX Conduct and Related Misconduct;
- 3.1.12. The opportunity to challenge the Investigator or any member of the Hearing Board for bias or conflict of interest;
- 3.1.13. The opportunity to offer relevant information, present relevant evidence, and identify witnesses during an investigation;
- 3.1.14. The opportunity to be heard, orally and/or in writing, as to the determination of a Regulation violation and the imposition of any sanction(s) and the opportunity to challenge or question adverse evidence;
- 3.1.15. Timely and equal access, as permitted by applicable law, to any information that will be used during Informal Resolution or Formal Investigation proceedings and related meetings;
- 3.1.16. Reasonable time, typically within seven business days, to prepare any response contemplated by these Procedures;
- 3.1.17. Written notice of any extension of timeframes for good cause;
- 3.1.18. Written notice, as permitted and/or required by applicable law, of the outcome of any Hearing, including the determination of any Regulation violation, imposition of any sanction(s), and the rationale for each. The Complainant will only receive information regarding the imposition of any sanction(s) as it relates to the Complainant; and
- 3.1.19. To receive written notice of appeal rights.

### 4. Initial Assessment

- 4.1. Upon receipt of a report of Title IX Conduct or Related Misconduct committed by a Student, the Sexual Misconduct Response Team ("SMRT") will review the reported

## APPENDIX A

information to respond to any immediate health or safety concerns raised by the report and to determine whether, for reports of conduct under Title IX Compliance and Resolution Regulation, there is reasonable cause to believe a policy violation could have occurred such that an investigation is warranted. An allegation of Title IX Conduct or Related Misconduct will be investigated regardless of any SMRT determination if investigation is recommended by the Title IX Coordinator/Associate Provost for Equity and Diversity or designee.

### 4.2. Sexual Misconduct Response Team

- 4.2.1. SMRT is co-chaired by a representative of the Office for Equity and Diversity and a representative from the Dean of Students Office.
- 4.2.2. The purpose of SMRT will be to assess the immediate resource needs of the Complainant(s) and Respondent(s), recommend any corrective actions needed to address campus environmental concerns, and monitor reports for any patterns or trends. SMRT will refer conclusions on any patterns or trends to the Division of Student Affairs for utilization in the development and presentation of prevention and awareness efforts.
- 4.2.3. SMRT will evaluate every report of Title IX Conduct or Related Misconduct by a student. The SMRT convenes (in person, by telephone, or by videoconference) weekly or as needed to review information received from a report of Title IX Conduct or Related Misconduct, as described above, and to review new, relevant information as it becomes available. As determined by the co-chairs, SMRT may include select members of the University Behavioral Concerns Team (“UBCT”) and shall include, at a minimum: (1) the Title IX Coordinator or his/her designee, (2) the assigned investigator, (3) a representative of the Office of Student Rights and Responsibilities (“OSRR”), (4) a representative of the ECU Police Department (the “ECUPD Representative”), (5) a representative from the Dean of Student’s Office, and (6) the University’s Clergy Compliance Officer. A representative of the Office of University Counsel will serve as an advisor to the SMRT. In addition, the SMRT may include a representative from Campus Living, the Counseling Center, or Student Health Services depending on the circumstances of the reported incident and the status of the Complainant and the Respondent.
- 4.2.4. The SMRT has access to available University records, which may otherwise be confidential, including University disciplinary, academic and/or personnel records. SMRT may seek additional information about the reported incident through any other legally permissible means.
- 4.2.5. In its initial assessment, the SMRT will confirm the parties have (as applicable):
  - 4.2.5.1. Been assessed for their safety and well-being and offered the University’s immediate support and assistance;

## APPENDIX A

- 4.25.2. Been informed of their right to seek medical treatment, and explained the importance of obtaining and preserving forensic and other evidence;
- 4.25.3. Been informed of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- 4.25.4. Been informed of the University's and community resources, the right to seek appropriate and available remedial and interim protective measures, and how to request those resources and measures;
- 4.25.5. Received a written explanation of all available resources and options and are offered the opportunity to meet to discuss those resources and options;
- 4.25.6. Been informed of the University's Informal Resolution or Formal Investigation options under these Procedures; ascertained the Complainant's expressed preference (if the Complainant has, at the time of the initial assessment, expressed a preference) for pursuing Informal Resolution, Formal Investigation, or neither; and confirmed each of the parties has had the opportunity to discuss any concerns or barriers to participating in any University investigation and resolution under these Procedures;
- 4.25.7. Been explained the University's prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;

Additionally, the SMRT will:

- 4.25.8. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident and whether there is reasonable cause to conclude that a violation of University Policy could have occurred;
- 4.25.9. Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), insure the Title IX Coordinator or designee contacts the appropriate child protective service agency; and
- 4.25.10. Communicate with appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

### 5. Health and Safety Threat Assessment

- 5.1. Following or simultaneous to the initial assessment, the SMRT will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the involved students or to any other member of the University community. If warranted, the SMRT will forward individuals of concern to the UBCT for further assessment. The SMRT will make this determination based upon a review of the totality of the known circumstances, and will be guided by a consideration of the following factors (the "Risk Factors"):

## APPENDIX A

- 5.1.1. Whether the student(s) have prior relevant arrests, is the subject of prior reports and/or complaints related to any form of Title IX Conduct or Related Misconduct, or has any history of violent behavior;
- 5.1.2. Whether the student(s) have a history of failing to comply with any University No- Contact Directive, other University protective measures, and/or any judicial protective order;
- 5.1.3. Whether the student(s) have threatened to commit violence or any form of Title IX Conduct or Misconduct;
- 5.1.4. Whether the alleged Title IX Conduct or Related Misconduct involved multiple students;
- 5.1.5. Whether the alleged Title IX Conduct or Related Misconduct involved physical violence. “Physical violence” means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, pushing, and brandishing or using any weapon;
- 5.1.6. Whether the report suggests a pattern of Title IX Conduct or Related Misconduct (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- 5.1.7. Whether the alleged Title IX Conduct or Related Misconduct was facilitated through the use of “date- rape” or similar drugs or intoxicants;
- 5.1.8. Whether the alleged Title IX Conduct or Related Misconduct occurred while the Complainant was unconscious, physically helpless or unaware that the Title IX Conduct or Related Misconduct was occurring;
- 5.1.9. Whether the alleged Complainant is (or was at the time of the Title IX Conduct or Related Misconduct) a minor (under 18);
- 5.1.10. Whether any evidence of other aggravating circumstances or signs of predatory behavior or mitigating circumstances are present; and/or
- 5.1.11. Whether either party has presented with evidence of suicidal ideation.

### 5.2. University Actions Following Health and Safety Threat Assessment

- 5.2.1. Upon completion of the health and safety threat assessment, if the Complainant requests that no investigation be pursued, and/or that no further action be taken, the Investigator, in consultation with SMRT, will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health and safety threat assessment, and the determinations of the SMRT will be documented and retained by the University in accordance with applicable law.
- 5.2.2. **Where the Complainant Wishes to Pursue Formal Complaint.** In most cases in which a Complainant files a Formal Complaint, that constitutes a violation of either the Title IX Compliance and Resolution Regulation or the University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct, and requests an investigation, the Title IX Coordinator/Associate Provost for Equity and Diversity and/or the assigned investigator will promptly initiate a Formal

## APPENDIX A

Investigation. In certain circumstances, the University may be required to dismiss a Formal Complaint either through a mandatory dismissal or discretionary dismissal as outlined in Sections 3.2 and 3.3 in the Title IX Compliance and Resolution Regulation.

- 5.2.3. **Where the Complainant Requests that an Investigation not be Pursued.** A Complainant may request that no investigation be pursued. The Title IX Coordinator/Associate Provost for Equity and Diversity and/or the assigned investigator will explain to the Complainant that University may not be able to honor such a request and still provide a safe and nondiscriminatory environment for all students and employees.
- 5.2.3.1. The SMRT and/or the Title IX Coordinator/Associate Provost for Equity and Diversity or designee will consider the following factors in evaluating such request(s):
- (1) the totality of the known circumstances;
  - (2) the presence of any Risk Factors, as described in Paragraph 5 of these Procedures;
  - (3) the potential impact of such action(s) on the Complainant;
  - (4) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Title IX Conduct or Related Misconduct;
  - (5) the existence of any independent information or evidence regarding the Title IX Conduct or Related Misconduct; and
  - (6) any other available and relevant information.
- 5.2.3.2. The University will seek to honor the Complainant's request(s) if it is possible to do so while also addressing the health and safety of the Complainant and the University community.
- 5.2.4 **Determination that a Complainant's Request(s) Can be Honored.** Where the Title IX Coordinator/Associate Provost for Equity and Diversity or designee and/or the assigned investigator determines that a Complainant's request(s) (that no investigation be pursued) can be honored, the University may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate supportive measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Informal Resolution. The Title IX Coordinator/Associate Provost for Equity and Diversity or designee also may request that a report be re-opened and pursued under these Procedures if any new or additional relevant information becomes available.



5.2.5 **Determination that a Complainant's Request(s) Cannot be Honored.**

Where the SMRT and/or the Title IX Coordinator/Associate Provost for Equity and Diversity or designee has determined that a Complainant's request(s) (that no investigation be pursued) cannot be honored (i.e., because honoring the Complainant's request(s) would impede the University's ability to ensure the health and safety of the Complainant and other members of the University community), the SMRT and/or the Title IX Coordinator/Associate Provost for Equity and Diversity or designee will take any appropriate University actions, which may include, without limitation, (i) the imposition of a No- Contact Directive and/or; (ii) the initiation of a Formal Investigation under these Procedures; (iii) the arrangement, imposition, or extension of any other appropriate remedial and/or protective measures; and/or (iv) referral to OSRR for the imposition of an administrative action, for protection of the ECU Community, pending the investigation and adjudication of the Title IX Conduct or Related Misconduct.

Where the SMRT and/or the Title IX Coordinator/Associate Provost for Equity and Diversity or designee has determined that the University must proceed with a Formal Investigation despite a Complainant's request to the contrary, the University will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University's investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed. In such cases, the Title IX Coordinator/Associate Provost for Equity and Diversity and/or assigned investigator will notify the Complainant that the University intends to proceed with an investigation, and that the Complainant is encouraged but not required to participate in the investigation or in any other actions undertaken by the University.

5.3. Notice to Complainant and Respondent of University Actions

- 5.3.1. The assigned investigator will promptly inform the Complainant of any action(s) undertaken by the University to respond to a health or safety threat to the Complainant or the University community, including the decision to proceed with an investigation. The assigned investigator also will promptly inform the Respondent of any action(s), excluding interim suspension from the University (where the Respondent will be informed by OSRR), (including any interim protective measures) that will directly impact the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator/Associate Provost for Equity and Diversity or designee retains the discretion to impose and/or modify any interim protective measures based on all available information. Interim protective measures will remain in effect through resolution of the report by the appropriate University executive, unless new circumstances arise

## APPENDIX A

which warrant reconsideration of the protective measures.

### 5.4. Interim Administrative Action

- 5.4.1. If the University seeks to impose an interim suspension on a Respondent during the pendency of an investigation, the University must undertake an individualized safety and risk analysis, determine that the Respondent is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Conduct or Related Misconduct justifies interim suspension, and provide the Respondent with notice an opportunity to challenge the decision immediately following the interim suspension, as provided by Section 3.1 of the Student Conduct Process Regulation. If the SMRT refers the matter to UBCT for evaluation, the UBCT shall recommend an interim administrative suspension according to the requirements of this provision.

## 6. University Resolution

- 6.1. These Procedures offer two forms of resolution of reports of Title IX Conduct or Related Misconduct against a student: (1) Informal Resolution (as described in Paragraph 6.3 of these Procedures), which includes a variety of informal options for resolving reports, and (2) Formal Investigation (as described in Paragraph 6.4 of these Procedures), which involves an investigation and findings of responsibility (if any), a Board Hearing to determine sanction (if applicable) and/or hear a contest of the findings, and a possible appeals to the Vice Chancellor for Student Affairs, and the ECU Board of Trustees (as described in Section 6.8.3.7 of these Procedures).
- 6.2. At any time, a complaint may be filed with the U.S. Equal Employment Opportunity Commission (<http://www.eeoc.gov>), U.S. Department of Education's Office of Civil Rights (<https://www2.ed.gov/about/offices/list/ocr/index.html>), or the North Carolina Civil Rights Division of the Office of Administrative Hearings (<http://www.oah.state.nc.us/civil>) as applicable.
- 6.3. Informal Resolutions
  - 6.3.1. Upon receipt of a Formal Complaint, the assigned investigator will issue the Notice of Investigation to both parties as outlined in Section 6.4.1.1. This Notice shall contain information about Informal Resolution.
  - 6.3.2. The University offers individuals the opportunity to resolve concerns of Title IX Conduct or Related Misconduct through 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. Informal Resolution is not be available where the SMRT and/or Title IX Coordinator/Associate Provost for Equity and Diversity

## APPENDIX A

or designee has determined that one or more of the Risk Factors listed in Section 5.1. of these Procedures are present. **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.** The Title IX Coordinator/Associate Provost for Equity and Diversity and/or the assigned investigator will maintain information about Informal Resolution availability and provide that information to any party to a complaint upon request.

6.3.3. At any time prior to the University reaching a determination of responsibility, the University may facilitate an Informal Resolution in which the assigned investigator will provide the parties written notice disclosing:

- (1) The allegations;
- (2) The requirements of the informal resolution process, including the circumstances under which the University precludes the parties from resuming a formal complaint arising from the same allegations, provided that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and proceed with a Formal Investigation;
- (3) Any consequences resulting from participating in the Informal Resolution process;
- (4) Any records that will be maintained or shared.

6.3.4. 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 these Procedures. At any time during the Informal Resolution process, any party has the right to withdraw and pursue a Formal Investigation.

6.3.5. The Office for Equity and Diversity will maintain records of all reports and conduct referred for Informal Resolution, which generally will be completed within sixty (60) business days, from the date the assigned investigator issues notice of the parties election to pursue Informal Resolution.

### 6.4. Formal Investigation

6.4.1. 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,

## APPENDIX A

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. 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 Investigatory Report. Findings and conclusions shall be made by the Hearing Board at the conclusion of the hearing.

- 641.1. Notice of Investigation. The assigned investigator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will:
- (1) identify the Complainant and the Respondent;
  - (2) specify the date, time (if known), location, and nature of the alleged Title IX Conduct or Related Misconduct;
  - (3) identify potential Regulation(s) violation(s), including the applicable Student Code of Conduct violation in the event the matter alleges an incident Related Misconduct;
  - (4) identify the Investigator;
  - (5) include information about what the parties can expect under the applicable Regulation and these Procedures, including any informal resolution option;
  - (6) explain the prohibition against Retaliation;
  - (7) instruct the parties to preserve any potentially relevant evidence in any format, and that they will have the right to review and inspect evidence acquired during the investigation;
  - (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest;
  - (9) a statement that the Respondent is presumed not responsible and a determination of responsibility will be made at a live hearing;
  - (10) a statement that the institution prohibits individuals from knowingly making false statements or knowingly submitting false information, Section 2.11. of the ECU Student Code of Conduct;
  - (11) provide a copy of the Policy and these Procedures; and
  - (12) the right to have an advisor of their choice, including an attorney (at their respective, sole expense), present at all meetings including a hearing if warranted.
- 641.2. The assigned Investigator will send a written request for any meeting or interview with any party or witness. If an email address

## APPENDIX A

- or physical location is not available, the party may be contacted by phone.
6413. If the University decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Investigation of Title IX Conduct or Related Misconduct, then the University will provide a subsequent Notice of Investigation with the additional allegation of Title IX Conduct or Related Misconduct to the parties prior to the matter being sent to OSRR.
6414. Other Forms of Discriminatory and/or Harassing Conduct. If a report of Title IX Conduct or Related Misconduct also implicates other forms of discriminatory and/or harassing conduct prohibited by the University's Notice of Nondiscrimination and Affirmative Action policy, the Title IX Coordinator/Associate Provost for Equity and Diversity and/or designee, will evaluate all reported allegations to determine whether the alleged Title IX Conduct or Related Misconduct and the alleged Notice of Nondiscrimination and Affirmative Action policy and/or Regulation on Resolving Allegations of Discrimination violation(s) may be appropriately investigated together without unduly delaying the resolution of the report of Title IX Conduct or Related Misconduct. Where the Title IX Coordinator/Associate Provost for Equity or Diversity or designee determines that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (i.e., the Notice of Nondiscrimination and Affirmative Action policy and/or the PDHR Regulation), but the investigation and resolution will be conducted in accordance with these Procedures.
6415. Other Student Code of Conduct Violations. If a report of Title IX Conduct or Related Misconduct also implicates other violations of the Student Code of Conduct, the assigned investigator will inform the Office of Student Rights and Responsibilities upon the conclusion of the investigation. Any supplemental violations of the Student Code of Conduct alleged against the Respondent will be included in the charges provided to the Respondent prior to a Hearing Board Hearing. In matters of Related Misconduct, the student will be notified of the applicable charge for violation of university regulation, including Section 2.15 of the Student Code.
6416. Opportunity for Acceptance of Responsibility. The Respondent may, at any time, elect to resolve the Formal Investigation process by accepting responsibility for the Title IX Conduct or Related Misconduct as charged, in which case OSRR will refer the matter to the Hearing Board for imposition of sanction(s). The Complainant will be notified and both parties will be given an opportunity to

## APPENDIX A

provide Mitigation/Impact Statements as described in Paragraph 6.6.2.1. The Respondent's acceptance of responsibility must be voluntary, supported by the facts, and with full knowledge of the ramifications of accepting responsibility. Additionally, any such acceptance of responsibility must be in writing and signed by Respondent.

- 6.4.1.7. Presumption of Non-Responsibility and Participation by the Parties. The investigation is a neutral fact-gathering process and the burden of gathering evidence sufficient to reach a determination of responsibility is on the University. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Hearing Board concludes that a Preponderance of the Evidence supports a finding that the Respondent violated the Regulation(s). Preponderance of the Evidence means that it is more likely than not that the alleged conduct occurred. All witness(es) are strongly encouraged to participate in any related investigation. Employees may be required to participate, to the extent allowed by law.
- 6.4.1.8. Overview of Investigation. During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, and to identify witnesses who may have relevant information. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather, consistent with applicable policy and law, other relevant and available inculpatory and exculpatory (favorable and unfavorable) evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).
- 6.4.1.9. Advisors. Throughout the investigation each party has the right to be represented, at the party's expense by a licensed attorney or non-attorney advocate who may participate in accordance with UNC Policy Manual 700.4.1.1[R]. The advisor may be any person, including an attorney, at the party's expense. The University reserves the right to remove any individual whose actions are disruptive to the proceedings.
- 6.4.1.10. Privileged Communications. The University cannot 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 voluntarily waived the privilege in writing.

## APPENDIX A

- 6.4.1.11. Relevance. The Investigator has the discretion to determine the relevance of proffered evidence and to include or exclude certain types of evidence. Evidence is relevant if (1) it bears on a fact of consequence in the case, or (2) it reflects on the credibility of a testifying party or witness in a material way. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait.

During any subsequent hearing made for the determination of responsibility, the Hearing Board can review the relevance determination as contested by the parties.

- 6.4.1.12. Site Visit(s). The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.
- 6.4.1.13. Expert Consultation(s). The Investigator may consult medical, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.
- 6.4.1.14. Coordination with Law Enforcement. The Investigator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the written request of law enforcement, the Investigator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will promptly resume the University investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation, to the extent allowed by applicable law.
- 6.4.2. 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. This timeframe may be extended for good cause, as provided in Section 7 below. The Investigator will notify the parties in writing of any extension of this timeframe and the reason for such extension. Any extension and the reason for the extension, will be shared with the parties in writing. The Investigator will contact the Complainant

## APPENDIX A

and Respondent with a status update of the investigation approximately thirty (30) business days from the issuance of the Notice of Investigation. If the investigation extends beyond sixty (60) business days, the Complainant and Respondent will be provided a status update at sixty (60) business days and then at repeating intervals of approximately thirty (30) business days thereafter until complete.

### 6.4.3. Evidence Review.

6.4.3.1. When the Investigator finishes gathering evidence, but prior to completing a draft of the Final Investigation Report, the Investigator will provide to the Complainant and Respondent (and their respective advisors, if any) a copy of all the evidence obtained by the Investigator that is directly related to the allegations. The Investigator will provide these records in either electronic format or hard copy. The Complainant and Respondent, with their respective advisors, will have ten (10) business days to review and provide any written response to the Investigator. A request for an extension may be made in writing to the Investigator extend the time frame. If an extension is granted, the other party will be informed and granted the same extension.

6.4.4. Final Investigation Report. The Investigator will prepare a draft Final Investigation Report, which will include a factual summary of the evidence gathered by the Investigator during the investigation. Prior to completing the draft Final Investigation Report, the Investigator will consult with the Office of University Counsel.

6.4.5. The Investigator will inform both parties simultaneously in writing when the draft Final Investigation Report is completed and provide a copy to each party and their advisor (if applicable) for the party to review and respond. The parties and their advisors will have 10 business days to complete their review and send the written response to the Investigator.

6.4.6. The Investigator will notify both parties, simultaneously, when OED provides a copy of the Final Investigation Report and case file to OSRR for continuation of the conduct process.

6.5. Hearing Board. OSRR will appoint a standing pool of trained members of the University community, including CSS, SHRA, EHRA non faculty and EHRA faculty employees and, at the discretion of OSRR and/or the Title IX Coordinator/Associate Provost for Equity and Diversity or designee, external professionals with experience adjudicating cases of Title IX Conduct or Related Misconduct. The Director of OSRR, or designee, will select three (3) members from this pool to serve on the Hearing Board, one (1) of which will serve as the Hearing Chair. The Hearing Board will review the Investigator's finding(s). All persons serving on any Hearing Board must be impartial and free from actual bias and conflict of interest.



## APPENDIX A

- 6.5.1. Either party may challenge the participation of any Hearing Board member and such members may be removed at the discretion of the Director of OSRR or his/her designee in the event he/she believes that the Hearing Board member cannot be impartial, when a conflict of interest becomes known and the Hearing Board member has not recused himself/herself, and/or when it is clear that the Hearing Board Member is unable or unwilling to appropriately apply the provisions of the Regulation and these Procedures.
- 6.5.2. Notice and Timing of Hearing. Typically, a hearing will be held within approximately sixty (60) business days from the date OSRR receives the Final Investigatory Report. OSRR will notify the parties in writing, at least ten (10) business days in advance, of the date, time, and location of the hearing; the names of the Hearing Board members and the Hearing Advisor; and how to challenge participation by any member of the Hearing Board or the Hearing Advisor for bias or conflict of interest. The Hearing Advisor may grant a request for an extension if it is for good cause and requested two (2) business days prior to the hearing. Good cause for extension may include the unavailability of the parties, the timing of semester breaks or University holidays, or other extenuating circumstances. Any extension, including the reason for the extension, will be shared with the parties in writing by the Hearing Advisor. Prior to the hearing, both parties will be given an opportunity to review the written evidence that will be used at the hearing and a list of witnesses.
- 6.5.3. Hearing Format. 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 also present any issues related to the Standard of Review to be applied by the Hearing Board. 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. The Hearing make take place with both parties in the same room or with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or witness answering questions.
- 6.5.4. OSRR will audio and/or visually record the live hearing and retain it in compliance with the Regulation.
- 6.5.5. Participation in Hearing
  - 6.5.5.1. Parties. Both the Complainant and the Respondent have a right to be present in order to participate at the Hearing which may be held in

## APPENDIX A

person, or virtually. Either party may request alternative methods for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Hearing Advisor at least two (2) business days prior to the hearing.

- 6.6.5.1.1. If, despite being notified of the date, time, and location of the hearing, either party is not in attendance, the hearing may proceed at the discretion of the Director of OSRR or designee. Neither party is required to participate in the hearing in order for the hearing to proceed.
- 6.5.5.2. Investigator or other witnesses. If the parties wish to request the presence of a witness, the parties must provide names of witnesses each party deems relevant to the determination five (5) business days in advance of the hearing so that OSRR can request participation of the witnesses it deems relevant. The Hearing Board may decline to hear from witnesses where it, after consulting with the parties about the purpose of the testimony of the witness, concludes that all the information the witness may provide is irrelevant to its review or is unhelpfully duplicative. The assigned Investigator will be available to respond to questions presented by either the Hearing Board or the parties.
- 6.5.5.3. 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 who may participate in accordance with UNC Policy Manual 700.4.1.1[R]. The University reserves the right to remove any individual whose actions are disruptive to the proceedings. If a party does not present to the hearing with an advisor, the University will provide (provide the party with an available advisor, selected from a pool of university employees trained to participate as an advisor in the hearing process. The party will not be charged for utilizing an advisor provided by the University.
- 6.5.5.4. Cross-Examination. Each party's advisor shall cross-examine the other party and any witness. The decision-maker(s) should not 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. Before a party or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- 6.5.5.5. Cases Involving Expressive Speech or Conduct. To the extent

## APPENDIX A

required by N.C. General Statutes Section 116-300, et seq. or policy of the University of North Carolina, students are entitled to a disciplinary hearing under these procedures, including, at a minimum, (1) the right to receive advance written notice of the charges, (2) the right to review the evidence in support of the charges, (3) the right to confront witnesses against them, (4) the right to present a defense, (5) the right to call witnesses, (6) a decision by an impartial arbiter or panel, (7) the right of appeal, and (8) the right to active assistance of counsel, consistent with G.S. 116-40.11.

- 6.5.6. Determination by the Hearing Board. 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.
- 6.5.7. Prior or Subsequent Conduct. Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Title IX Conduct or Related Misconduct. Such prior or subsequent conduct may also constitute a violation of the Notice of Nondiscrimination and Affirmative Action policy and/or other University policy, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed, to the extent allowed by law, if evidence of prior or subsequent conduct is deemed relevant as permitted or required by applicable law.
- 6.5.8. Prior Sexual History. The sexual history of a Complainant will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history of either of the parties is generally not relevant to the determination of a Policy violation and will be considered only 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. As described in Section 6.5.7 above, pattern evidence of similar Title IX Conduct or Related Misconduct may be relevant. In addition, prior sexual history may be relevant to explain the presence of a physical injury or

## APPENDIX A

to help resolve another question raised by the complaint. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant as permitted or required by applicable law.

- 6.5.8.1. Notice of Hearing Board 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:
- (1) identification of the allegations constituting Title IX Conduct or Related Misconduct;
  - (2) 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;
  - (3) findings of fact supporting the determination;
  - (4) conclusion regarding the application of the Regulation and Student Code of Conduct to the facts;
  - (5) 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;
  - (6) the University's procedures and permissible basis for the Complainant and Respondent to appeal.

### 6.6. Sanctioning

- 6.6.1. Upon the conclusion of the hearing and the determination of responsibility by the Hearing Board, if the Respondent is found responsible for any of the allegations of Title IX Conduct or Related Misconduct, the Board will be determinate any applicable sanctions.
- 6.6.2. 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.
- 6.6.2.1. 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

## APPENDIX A

OSRR for consideration in determining an appropriate sanction(s). The Complainant may submit a written statement describing the impact of the Title IX Conduct or Misconduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. 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 and the parties' other written submissions to the Board for review in the determination of the appropriate sanction.

- 6.6.3. The Regulation(s) prohibit a broad range of conduct, all of which is serious in nature. The propriety of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances outlined in the investigation and hearing. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Student Code of Conduct provides the Hearing Board with wide latitude in the imposition of sanctions tailored to the facts and circumstances of the Title IX Conduct or Related Misconduct, the impact of the conduct on the Complainant and University community, and accountability for the Respondent. The imposition of sanctions is designed to eliminate Title IX Conduct or Related Misconduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and corrective components. Some conduct, however, is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process that it requires severe sanctions, including suspension or expulsion from the University.
- 6.6.3.1. In determining the appropriate sanction(s), the Hearing Board will be guided by a number of considerations, including:
- (1) The severity, persistence or pervasiveness of the Title IX Conduct or Related Misconduct;
  - (2) The nature or violence (if applicable) of the Title IX Conduct or Related Misconduct;
  - (3) The impact of the Title IX Conduct or Related Misconduct on the Complainant;
  - (4) The impact or implications of the Title IX Conduct or Related Misconduct within the University community;
  - (5) Prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history, at the University or elsewhere, and any criminal convictions;
  - (6) The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning; and
  - (7) Any other mitigating, aggravating, or compelling factors.

## APPENDIX A

- 6.6.4. 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.
- 6.6.5. 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.
  - 6.6.5.1. Recommendations for Expulsion. In the event the Hearing Board believes expulsion from the University is the appropriate sanction, he/she will make a recommendation to the Vice Chancellor for Student Affairs or designee who will make the final determination regarding sanctions.
  - 6.6.5.2. 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.
  - 6.6.5.3. Any sanction or combination of sanctions imposed upon a Respondent will be documented in the Respondent's education record. Nothing in these Procedures prevents the Hearing Board from imposing disciplinary action against a Respondent where the Final Investigation Report demonstrates that the Respondent engaged in other conduct prohibited by the Student Code of Conduct and/or other University Policy.
- 6.7. The University does not impose restrictions on the parties regarding re-disclosure of the incident, their participation in proceedings under these Procedures, or the Final Outcome Letter, provided that the manner in which any disclosure is made must not be disruptive to the University's educational and/or work environment. Any party may disclose information about the incident, participation in the proceeding, and the Final Outcome Letter to and in connection with consultation with his or her own legal counsel; otherwise, employees and agents of the university may disclose confidential student records and confidential personnel information about others only if and to the extent allowed by law.
- 6.8. Appeals.

## APPENDIX A

### 6.8.1. Appeal of Hearing Board Determination.

- 6.8.1.1. Either party may appeal the determination of responsibility. During an appeal, the appealing party has the burden of showing (1) a violation of due process as defined by the procedures stated in the Regulation and this Appendix A; or (2) a material deviation from Substantive and Procedural Standards adopted by the UNC Board of Governors; or (3) new evidence that was previously unavailable; or (4) conflict of interest or bias of the Title IX Coordinator, investigator or decision-maker.
- 6.8.1.2. Violation of Due Process. Due process requires notice and an opportunity to be heard. A violation of due process means that the appealing party was not provided the required notice or an opportunity to be heard.
- 6.8.1.3. Material Deviation from Substantive and Procedural Standards. Substantive and Procedural Standards require that the decision reached be neither arbitrary nor capricious. Generally, this means that there is some evidence to support the decision reached.
  - 6.8.1.3.1. A material deviation from substantive standards means there is a lack of information in the record that could support the decision or sanction(s). This does not mean the information presented at the hearing can be re-argued on appeal; rather, it requires a showing that no reasonable person could have determined the Respondent was (or if applicable, was not) responsible or could have imposed the sanction that was issued, based on the information in the record.
  - 6.8.1.3.2. A material deviation from procedural standards means that specified procedural errors or errors in interpretation of University policies or regulations were so substantial as to effectively deny the appealing party a fair hearing through the improper exclusion or admission of evidence or testimony the absence or inclusion of which likely would have resulted in a different outcome in the case. Reasonable, non-substantial deviations from the procedures set out in this Regulation and this Appendix A will not invalidate a decision or proceeding unless the appealing party can show that, but for the deviation or error, there likely would have been a different outcome in the case.
- 6.8.1.4. 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.

## APPENDIX A

- 6.8.1.5. 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.
- 6.8.1.6. Requesting an Appeal. The appealing party must specify in writing (“appeal letter”) the grounds that form the basis for her/his appeal. The appealing party must provide factual information to support her/his claim and explain what outcomes she/he is seeking. The appealing party has a right to be assisted in preparing her/his written challenge, by a licensed attorney or non-attorney advocate, at the appealing party’s expense. OSRR will be available to guide the student through the conduct process, to answer any conduct process-related questions, and to assist with the securing of information from the University. 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.
- 6.8.2. 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 based on the standard in Section 6.8 above. 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.
- 6.8.3. Sanction Appeal by Respondent
- 6.8.3.1. During an appeal of a sanction imposed by the Hearing Board, the Respondent has the burden of showing either (1) a violation of due process as defined by the procedures stated in the Regulation and this Appendix A; or (2) a material deviation from Substantive and Procedural Standards adopted by the UNC Board of Governors; or (3) new evidence that was previously unavailable; or (4) conflict of interest or bias of the Title IX Coordinator, investigator or decision-maker.
- 6.8.3.2. Violation of Due Process. Due process requires notice and an opportunity to be heard. A violation of due process means that the appealing party was not provided the required notice or an opportunity to be heard.



## APPENDIX A

- 6.8.3.3. Material Deviation from Substantive and Procedural Standards. Substantive and Procedural Standards require that the decision reached be neither arbitrary nor capricious. Generally, this means that there is some evidence to support the decision reached.
- 6.8.3.3.1 A material deviation from substantive standards means there is a lack of information in the record that could support the decision or sanction(s). This does not mean the information presented at the hearing can be re-argued on appeal; rather, it requires a showing that no reasonable person could have determined the Respondent was (or if applicable, was not) responsible or could have imposed the sanction that was issued, based on the information in the record.
- 6.8.3.3.2 A material deviation from procedural standards means that specified procedural errors or errors in interpretation of University policies or regulations were so substantial as to effectively deny the appealing party a fair hearing through the improper exclusion or admission of evidence or testimony the absence or inclusion of which likely would have resulted in a different outcome in the case. Reasonable, non- substantial deviations from the procedures set out in this Regulation and this Appendix A will not invalidate a decision or proceeding unless the appealing party can show that, but for the deviation or error, there likely would have been a different outcome in the case.
- 6.8.3.4. 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.
- 6.8.3.5. 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.
- 6.8.3.6. Requesting an Appeal. The Respondent must specify in writing (“appeal letter”) the grounds that form the basis for her/his appeal. The Respondent must provide factual information to support her/his claim and explain what outcomes she/he is seeking. The Respondent has a right to be assisted in preparing her/his written challenge, by a licensed attorney or non-attorney advocate, at the Respondent’s expense. OSRR will be available to guide the student through the conduct process, to answer any conduct process-related questions, and to assist with the securing of information from the University. Once an appeal is received by OSRR, OSRR will notify the non-appealing party in writing of the

## APPENDIX A

appeal. OSRR will give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

- 6.8.3.6.1 The appeal letter must be dated, signed by the Respondent, and received by OSRR within five (5) business days from the date that the written decision on sanctions is provided, either by hand delivery or by delivery through e-mail or postal mail. Appeals should be directed to [osrr@ecu.edu](mailto:osrr@ecu.edu); or 364 Wright Building. Failure to deliver the written notice of appeal within this time limit will render the decision of the Hearing Board (or the Vice Chancellor for Student Affairs in a decision for expulsion) final and conclusive. Upon request to OSRR, a request for an extension of time may be granted for good cause shown.
- 6.8.3.7. Appeal of Vice Chancellor for Student Affairs Imposition of Expulsion. If the Vice Chancellor for Student Affairs determines that a Respondent should be expelled, the Respondent has the right to appeal the decision to the East Carolina University Board of Trustees. The Respondent should send a written appeal by certified or registered mail, return receipt requested, or by another means that provides proof of delivery 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. A copy must also be provided to the Office of Student Rights and Responsibilities and the Vice Chancellor for Legal Affairs and University Counsel. 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.
  - 6.8.3.7.1 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.
- 6.8.4. Nothing in these Procedures abrogates post-adjudication rights as provided by state and federal law (i.e., North Carolina Civil Rights

## APPENDIX A

Division of the Office of Administrative Hearings; the Office for Civil Rights; and the Equal Opportunity Employment Commission).

### **7. Extension of Timelines for Good Cause**

- 7.1. The University will typically investigate within sixty (60) business days. However, any deadline or timeframe for a particular portion of these Procedures may be extended by the Title IX Coordinator/Associate Provost for Equity and Diversity or designee for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. In the event an extension is necessary, the Investigator, and/or the Title IX Coordinator/Associate Provost for Equity and Diversity or designee, will notify the parties in writing of any extension of a deadline or timeframe and the reason for such extension.

### **8. Vice Chancellor for Student Affairs Substitution**

- 8.1. The Chancellor may assume the responsibility of the Vice Chancellor for Student Affairs or designate another Vice Chancellor or other ECU administrator in the event the Vice Chancellor for Student Affairs is unavailable; is a witness in the investigation; has a conflict of interest; or when the Chancellor determines that a substitution is necessary to ensure a fair and timely review. In the event the Chancellor assumes the role of the Vice Chancellor for Student Affairs, the Chancellor will appoint another Vice Chancellor to assume responsibilities of the Chancellor under these procedures.