Interim Regulation on Responding to Complaints of Sexual Harassment, Sexual Misconduct and/or Discrimination on the Basis of Sex

Interim

REG06.40.01 Current Version

Authority: Chancellor

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Related Policies: Sexual Harassment, Discrimination, and Conflicts of Interest Policies and Procedures of East Carolina University
Student Conduct Process (specifically 2.3-2.4.1.2)
Campus Security Authorities
Part XII of Faculty Manual
2014 Equal Employment Opportunity Plan
Mediation and Grievance Procedure for SPA Employees

Additional Resources: ECU Title IX Resources
Title IX OCR provisions
U.S. Department of Education Office for Civil Rights, April 2011 Dear Colleague Letter: Sexual Violence
U.S. Department of Education Office for Civil Rights, 2014 Guidance
Text of Title IX (20 U.S.C. 1681-1688)
U.S. Department of Education Office for Civil Rights Title IX General Information
Title IX Regulations
U.S. Department of Education Office for Civil Rights, Dear Colleague

Letter: Sexual Violence Background, Summary, and Fast Facts
U.S. Department of Education Office for Civil Rights, Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School
U.S. Department of Education Office for Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students By School Employees, Other Students or Third Parties
U.S. Department of Education Office for Civil Rights, Sexual Harassment: It's Not Academic
U.S. Department of Justice The Campus Sexual Assault (CSA) Study

Contact Information: Associate Provost for Equity and Diversity, Office for Equity and Diversity, 328-6804

Archived Versions:
Version 1 Version 2 Compare Versions

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1. Introduction

1.1. Sexual harassment, sexual misconduct and/or discrimination on the basis of sex are illegal and endanger the environment of tolerance, civility, and mutual respect that must prevail if the University is to fulfill its mission. ECU is committed to providing and promoting an atmosphere in which students can engage fully in the learning process and employees can realize their maximum potential in the workplace.

1.2. ECU is required by Title IX of the Education Amendments of 1972 not to discriminate on the basis of sex in its education programs and activities. ECU prohibits any acts of sexual misconduct and/or related retaliation against employees, students or visitors, regardless of sexual orientation or gender identity. When an allegation of such misconduct or retaliation is brought to a Campus Security Authority as referenced in section 2.1 or an otherwise obligated employee, and a Respondent is found to have violated this regulation, sanctions up to and including termination and/or expulsion will be imposed to reasonably ensure that such actions are not repeated by the accused within the University community. ECU is committed to eliminating sexual misconduct in all forms to include but not limited to, domestic violence, relationship violence, sexual assault, sexual harassment, stalking, and will take appropriate remedial action against any individual found responsible for an act or acts in violation of this regulation. Acts of sexual violence or sexual misconduct may also constitute violations of

applicable criminal or civil law, or other applicable ECU policies that may require separate proceedings. To further its commitment against sexual violence and/or sexual misconduct, ECU provides reporting options, an investigative process, appropriate disciplinary processes, and prevention training and other related services as appropriate.

1.3. ECU students, employees, and/or visitors are encouraged to report sexual harassment, including sexual assault, sexual violence or other sexual misconduct, or related questions to the Title IX Coordinator in the Office for Equity and Diversity, the ECU Deputy Title IX Coordinator ("Deputy Coordinator") in the Dean of Students Office, the Office of Student Rights and Responsibilities, the ECU Police, and/or to the U.S. Department of Education's Office for Civil Rights. Any employee who receives a report of sexual misconduct should contact the Title IX Coordinator and must not attempt mediation with the Complainant and Respondent.

1.3.1. The Title IX Coordinator may be reached in the Office for Equity and Diversity, Old Cafeteria Building Suite G-406, phone (252) 328-6804, or email oed@ecu.edu.

1.3.2. The Title IX Coordinator responsibilities include overseeing ECU's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints.

1.4. University policy and federal and state laws, including Title IX of the Education Amendments of 1972, prohibit the taking of retaliatory measures against any individual who files a complaint in good faith and/or participates in any investigation related to an allegation of prohibited harassment or discrimination. If University officials learn of such behavior, the University reserves the right to take appropriate disciplinary action, as well as to act to protect the reporting parties.

2. Definitions

2.1. Complainant - A Complainant is an individual alleging conduct prohibited under this regulation.

2.2. Consent - Consent is explicit approval and permission to engage in sexual activity demonstrated by clear actions, words, or writings. Consent is informed, freely given and mutually understood by all parties involved. If coercion, intimidation, threats, and/or physical force are

used, there is no consent. If the Complainant was mentally or physically incapacitated or impaired so that the Complainant could not understand the fact, nature, 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. 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.

2.3. Preponderance of the evidence - This standard will be used to evaluate the evidence for purposes of making findings and drawing conclusions for an investigation conducted under this regulation; meeting the standard constitutes a conclusion it is more likely than not that the alleged conduct occurred.

2.4. Respondent - A Respondent is an individual accused of violation under this regulation.

2.5. Responsible Employee - A Responsible Employee is (1) a person designated as a supervisor of any University employee; (2) any person who is designated as a Campus Security Authority; or (3) any ECU employee responsible for coordinating or supervising clinical education experiences, practicum and/or internships. Responsible Employees must report incidents of Sexual Misconduct to the Title IX coordinator and must not attempt mediation with the Complainant and Respondent.

2.5.1. Faculty and other ECU employees who are responsible for coordinating or supervising clinical education experiences, practicum and/or internships are considered to be Responsible Employees with respect to the students participating in those experiences, and are required to report any allegations of Sexual Misconduct that they receive relating to those students to the Title IX coordinator.

2.5.2. Campus Security Authority (CSA)

2.5.1.1. **Who are CSAs?** ECU officials listed in the annual security report, which is accessible through the hyper-link in the Related Policies section, above. This includes but is not limited to officials in the Office for Equity and Diversity, the ECU Police, Office of Student Rights and

Responsibilities, the Campus Living Conduct Office, any Campus Living coordinator or resident advisor, an advisor of a registered student organization, coaches for athletic teams and any official that has significant responsibility for student and campus activities.

2.5.1.1.1 Each CSA must ensure that the Anonymous Crime Reporting Form is completed and submitted to the Office of Victims Services in the ECU Police Department

2.5.1.2. **Who are not CSAs?** Faculty members who do not have any responsibility for student and campus activity beyond the classroom and clerical staff are not considered CSAs, and therefore are not required to complete the Anonymous Crime Reporting Form. Counselors in the Center for Counseling and Student Development and medical providers in Student Health Services, are not required to report information received when they are functioning within the scope of their license, certification or religious training, and performing their official duties providing mental health counseling, medical care or religious counseling.

2.6. Retaliation - Retaliation is any act by a University employee or student of reprisal, interference, restraint, penalty, discrimination, coercion, or harassment against an employee or student for using the applicable policies responsibly.

2.7. Sex Discrimination - actions that subject individuals to improper and unequal treatment on the basis of their sex, including but not limited to the improper exclusion of individuals from University activities. **Sexual Misconduct** is a form of sex discrimination that includes Sexual Harassment and Sexual Violence.

2.7.1. Sexual Harassment - The following constitute sexual harassment:

2.7.1.1. "Quid Pro Quo" - Making verbal remarks or committing physical actions that propose to people of either sex that they engage in or tolerate activities of a sexual nature in order to avoid some punishment or to receive some reward.

2.7.1.2. Hostile Environment - Conduct that is directed toward a particular person or persons based upon the person's sex. The conduct is unwelcome; severe or pervasive; objectively offensive; and unreasonably interferes with the target person's employment, academic

pursuits, or participation in University-sponsored activities as to effectively deny equal access to the University's resources and opportunities. Hostile environment is determined by looking at the totality of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether the conduct unreasonably interferes with an individual's work performance, academic advancement, and participation in extracurricular activities or access to University services. Continuing verbal, nonverbal or physical conduct of a sexual nature when the person or persons the conduct is directed toward has indicated clearly, by word, writing, or action, that this conduct is unwanted also constitutes sexual harassment. This includes unwelcome sexual advances and requests for sexual favors. In some cases, a single incident may be severe enough to constitute harassment. Examples of conduct that could create or contribute to hostile environment harassment may include but are not limited to:

2.7.1.2.1. Unwelcome jokes about sex or sexual orientation;

2.7.1.2.2. Offensive or degrading physical contact or coercive behavior, including stroking, patting or similar physical contact; or

2.7.1.2.3. Pictures, posters, graffiti or written materials displayed in a workplace or classroom which are objectively, sexually offensive or obscene and that exceed the bounds of free speech protected by the Constitution.

2.7.2. Sexual Violence - a severe form of sexual harassment that includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion and refers to any physical sexual act that is completed or attempted against a victim's will or when a victim is unable to consent. The act may involve actual or threatened physical force, use of weapons, coercion, intimidation or pressure.

2.7.2.1. Sexual Assault - an actual, attempted, or threatened sexual act with another person without that person's consent. Sexual assault is often a criminal act that can be prosecuted under State law, as well as form the basis for discipline under applicable ECU policy or regulations. Sexual assault includes but is not limited to:

2.7.2.1.1. Involvement without consent in any sexual act in which there is force, expressed or implied, or use of duress, or deception upon the victim. Forced sexual intercourse is included in this definition, as are the

acts commonly referred to as "date rape" or "acquaintance rape." This definition also includes the coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another.

2.7.2.1.2. Involvement in any sexual act when the victim is unable to give consent.

2.7.2.1.3. Intentional and unwelcome touching, or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts (defined as primary genital area, groin, inner thigh, buttocks, or breast).

2.7.2.1.4. Offensive, illegal sexual behavior that is directed at another such as indecent exposure or voyeurism.

2.7.2.1.5. Non-forcible sex acts, including unlawful sexual acts where consent is not relevant, such as sexual contact with an individual under the statutory age of consent, as defined by State law, or between persons who are related to each other within degrees wherein marriage is prohibited by law.

2.8. Title IX - Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is an all-encompassing federal law that prohibits discrimination based on the sex: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance..." Sexual misconduct may be so severe, persistent/pervasive, and objectively offensive as to limit, deprive, or deny educational access, benefits or opportunities.

3. Reporting Protocols

3.1. For Allegations Against A Student: Any individual who believes that, due to the conduct of another student, he/she has been the victim of Sexual Misconduct or who feels that he/she has been retaliated against for his/her good faith reporting of allegations or his/her participation in an investigation of alleged prohibited harassment or discrimination should file a Title IX complaint with the Deputy Title IX Deputy Coordinator within the Dean of Students Office or the Office for Equity and Diversity to initiate an investigation.

3.2. For Allegations Against A University Employee: Anyone who believes that, due to the conduct of a University employee, he/she has

been the victim of Sexual Misconduct, or who feels that he/she has been retaliated against for his/her good faith reporting of allegations or his/her participation in an investigation of alleged prohibited harassment or discrimination should file a Title IX complaint with the Office for Equity and Diversity to initiate an investigation.

3.3. Responsible Employees **must** report allegations of Sexual Misconduct immediately to the Title IX Coordinator, in order to allow the University to conduct an investigation. Failure to do so may result in disciplinary action by the University, up to and including dismissal.

3.3.1. Regardless, of whether an employee has an obligation under the Clery Act (as a CSA) to complete an anonymous reporting form, Responsible Employees must report allegations of sexual misconduct to the Title IX coordinator.

3.4. Responsible Employees **do not** need to determine whether or not the allegations reported to them occurred, however, they must report the names of the alleged perpetrator and subject of the conduct involved, as well as relevant facts they may have, including the date, time, and location to the Title IX coordinator or appropriate designee.

3.5. Responsible Employees **should** also inform Complainants of (1)the Responsible Employee's reporting obligation to the Title IX Coordinator or appropriate designee; (2) the Complainant's option to request that their confidentiality be maintained by ECU, which will be considered and (3) that a student Complainant can share information confidentially with counselors in the Center for Counseling and Student Development, medical providers in Student Health Services, and the Victims' Advocate.

3.6. With the exception of those who receive information within the performance of a role for which they have statutory privilege (for example a doctor in the course of providing patient care or a counselor during a counseling session), all University faculty or staff members, who become aware of allegations of Sexual Misconduct, **should** immediately report the behavior to the Title IX Coordinator to allow the University to conduct an investigation. Consistent with Part XII of the ECU Faculty Manual, Faculty Grievance Policies and Procedures, Section IV. II.A., upon receipt of a report from a Complainant, the Department Chairs must consult with the Title IX Coordinator.

3.7. Complaints can be submitted in several ways.

3.7.1. Crimes should be reported to ECU Police through the Crime Tip Line at 737-8477, or electronically through the "Report a Crime" section of the ECU Police Department website (http://www.ecu.edu/cs-studentlife/police/report_crime.cfm). For emergencies or crimes in progress, dial 911 or ECU Dispatch at (252) 328-6787.

3.7.2. Calling the anonymous ECU Cares line at (252)737-5555

3.7.3. Submitting a complaint electronically using the Student Affairs complaint form, accessible at the Dean of Students' website (http://www.ecu.edu/dos) under "Title IX".

3.7.4. Submitting a complaint electronically through the Office for Equity and Diversity complaint form, accessible at the OED website (http://www.ecu.edu/cs-acad/oed).

3.7.5. Speaking with Dean of Students Office staff on the phone (252) 328-9297 or in person at the Dean of Students Office, 362 Wright Building, Monday-Friday from 8:00 a.m.-5:00 p.m.

3.7.6. Speaking with someone in the Office for Equity and Diversity at (252) 328-6804, Old Cafeteria Complex, Suite G 406, Greenville, NC 27858.

4. Investigation Principles

4.1. The University will investigate and act upon information that is provided to it, including but not limited to third party reports, about allegations of Sexual Misconduct and Title IX regulations.

4.2. The University is committed to the following when investigating complaints:

4.2.1. Basing findings on the preponderance of the evidence standard;

4.2.2. Treating all parties fairly and equally;

4.2.3. Not attempting to resolve complaints of sexual misconduct through informal means; and

4.2.4. Notifying all parties that the investigation will be impartial,

prompt and thorough.

4.3. Conflict of Interest

4.3.1. If a conflict of interest is identified before an investigation has begun, then the Investigator will provide the Complainant with a secondary individual to assist with or take over the investigation;

4.3.2. If a conflict of interest is identified after an investigation has begun, the Investigator can continue to investigate if, after full disclosure of a potential conflict of interest, the Complainant and the Respondent are given the opportunity to request a secondary individual to complete the investigation and decline to so request.

4.3.3. If the parties feel that the Investigator can remain unbiased they will be asked to sign a continuation agreement, to that effect before the Investigator will continue.

4.4. The University may take interim measures to protect the Complainant in the educational setting or workplace based on the facts specified in the allegation, including but not limited to: minimizing contact with the Respondent and allowing the Complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate.

4.5. Both Complainants and Respondents will be provided information about available on and off campus resources, including but not limited to: victim advocacy, counseling/mental health services, disability support services, health services, and explanation and assistance regarding reporting a crime to campus or local law enforcement.

4.6. Both Complainants and Respondents will have the opportunity to present witnesses and evidence during the investigation and in any disciplinary proceeding, and to have a support person present, consistent with applicable policy.

4.7. The University will make every effort to complete investigations within approximately 60 calendar days, depending on the complexity of the investigation and severity and extent of the alleged conduct.

4.8. Concurrent written notice will be provided to the Complainant and Respondent of the outcome of the complaint.

4.9. Both Complainants and Respondents will have the opportunity to appeal in accordance with applicable University policies and procedures.

4.10. Remedies will be provided to the Complainant and university community as needed and will be dependent on the specific facts.

4.10.1. Potential remedies for the Complainant include but are not limited to: providing comprehensive, holistic victim services including medical, counseling and academic support services; ensuring the Complainant and Respondent do not share classes, work space/arrangements or extracurricular activities; and providing appropriate academic adjustments. This may also include remedies that were declined by the Complainant as interim measures.

4.10.2. Potential remedies for the university community include but are not limited to: training or retraining employees and/or students; conducting bystander intervention and sexual violence prevention programs; and developing materials on sexual violence and distributing to the university community.

5. Confidentiality and Privacy

5.1. The University will protect Complainants' privacy to the extent possible under the law. In some situations, including those in which disciplinary action is a possible outcome, due process may require disclosure of information to persons accused.

5.2. The University may be required by law to investigate complaints under this regulation, but that investigation may be limited by the information provided by the Complainant and the Complainant's willingness to pursue a formal complaint.

5.3. The University will make every reasonable effort to abide by Complainants' wishes to remain anonymous; however, the University will balance requests for anonymity/confidentiality with the safety of other members of the community.

5.3.1. Factors that will be considered in determining whether to disclose a complaint or report of misconduct to a Respondent include: the seriousness of the alleged conduct; the Complainant's age; whether there have been other complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record"

under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.15.

5.3.2. If the University proceeds with an investigation or other response to the Report, then the Investigator will notify the Complainant before the Respondent is contacted. The Complainant will also be notified of the University's retaliation policy.

5.4. Handling of Confidential Reports

5.4.1. If the Complainant would like to remain anonymous, the Investigator will:

5.4.1.1. explain that the University endeavors to investigate the allegations as presented without revealing the Complainant's identity, but that the University cannot ensure complete confidentiality and it may be limited in its ability to take disciplinary action if the Complainant desires to remain anonymous;

5.4.1.2. explain that the University has an obligation to investigate and document the allegations, and advise the Complainant about the right to make a confidential report for statistical inclusion in the annual security report;

5.4.1.3. to the extent practicable, provide resources and internally manage the Complainant's situation, as the University would if the Complainant did not request anonymity; and

5.4.1.4. ask the Complainant to acknowledge and sign a document confirming that s/he has requested anonymity and that may mean that it is unable to take disciplinary action against the Respondent.

6. Coordination with Law Enforcement Investigation or Other Processes

6.1. A University investigation with respect to Title IX is separate from a criminal investigation (into complaints alleging harassment or sexual misconduct that constitutes a criminal offense, such as assault, battery, rape or another form of violence or sexual violence). A Complainant can file a police report at any time, including during the duration of a Title IX investigation under this regulation.

6.2. A University investigation with respect to Title IX is separate from

the University's review of a Student Code of Conduct violation. A Complainant can file a report and/or a complaint to Office of Student Rights and Responsibilities at any time, including during the duration of a Title IX investigation under this regulation.

6.3. The Title IX Coordinator and Deputy Title IX Coordinator will coordinate with a criminal investigating agent and/or the Office of Student Rights and Responsibilities as permitted by law.

6.4. The Title IX investigation will continue to go forward during a criminal investigation. Reporting to the police and/or Office of Student Rights and Responsibilities does not end the Title IX investigatory responsibility for the University.

6.4.1. Information about on-campus and off-campus resources will be provided to both parties with respect to filing criminal charges, including numbers and contact information for the police department with jurisdiction over a matter.

6.4.2. If the reporting party needs assistance with filing a formal police report, University personnel will assist with this process.

6.5. The standard of evidence for conviction in criminal cases ("beyond a reasonable doubt") is a higher standard than the University will use in a Title IX investigation ("preponderance of the evidence")

6.6. The Title IX Coordinator, Deputy Coordinator, and the ECU Police Department will communicate regularly regarding Title IX investigations and requirements.

7. Educational Programs

7.1. The University provides education on these issues in a variety of forms and forums.

7.2. Employees designated as Campus Security Authorities, must complete enhanced discrimination, harassment and safety training every year, which, at a minimum, includes the requirements of Title IX and Clery, the proper method for reporting sexual harassment and sexual violence and the University's responsibilities for responding to reports of sexual harassment and sexual violence.

7.3. Each employee is responsible for completing training on Title IX

and related issues no less than every five years.

7.3.1. Effective October 1, 2014, new employees must complete training on Title IX and related issues within 90 days of hire date.