



## 02.205 Unlawful Discrimination, Harassment, and Sexual Misconduct Policy

**Authority:** Chancellor

**History:** Established January 3, 2017; replaces former Policies 02.200 Harassment Prevention and 02.210 Harassment Resolution Procedures

**Sources of Authority:** UNC Policy Manual, Chapter 100.1, Section 502; Code Section 103

**Related Links:** [UNCW Policy 02.230 Equal Employment Opportunity and Affirmative Action](#); [Policy 04.130 Student Gender-Based/Sexual Misconduct Policy](#); [Policy 02.220 Improper Relationships Between Students and Employees](#); [Policy 08.510 SHRA Disciplinary Action, Suspension and Dismissal](#); [Policy 08.540 Workplace Violence Policy and Protocol](#); [Policy 08.420 Employee Assistance Program](#); [Code of Student Life](#); [Faculty Handbook](#); [Section 603 of the Code of the Board of Governors](#).

**Responsible Offices:** Office of Human Resources; Office of Title IX and Clery Compliance; Office of the Dean of Students

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### I. Purpose

The university promotes a learning, working, and social environment where all members of the campus community interact in a mutually respectful, professional, and fair manner. The university is committed to ensuring a workplace and academic environment free of unlawful discrimination, harassment, and sexual misconduct, as these behaviors may create a risk to health, safety or wellbeing, cause serious emotional distress, loss of productivity and morale, and potential legal risks.

### II. Scope

- A. This Policy applies to the prohibited conduct described in Section III and includes acts communicated physically, verbally, in print, electronically or through other means by or against students and employees. The category of “employees” includes all SHRA and EHRA employees, including those who are in assignments that are full-time, part-time, probationary, non-career status, adjunct, and temporary.
- B. This Policy does not apply to protected speech, reasonable criticisms of work, fair and justified feedback, evaluations, or disciplinary actions deemed unfounded by Human Resources. This Policy applies only to behavior that a reasonable person would view as violating the rights of another.

- C. SHRA employees, former employees, and applicants for employment seeking to grieve unlawful discrimination or harassment based on race, religion, color, national origin, sex, age, disability, genetic information, or political affiliation, if the individual believes that he or she has been discriminated against in the terms and conditions of employment, must follow the procedures in [Policy 08.520 SHRA Employee Appeals and Grievances](#). EHRA employees or former employees seeking to grieve unlawful discrimination when an adverse employment action is taken must follow the procedures in [Policy 08.521 EHRA Review and Appeal Procedures](#).
- D. The university will respond promptly to all complaints of unlawful discrimination, harassment, and sexual misconduct. When necessary, the university will institute discipline against the offending individual, which may result in a range of sanctions. For SHRA employees, disciplinary actions are explained in [Policy 08.510 SHRA Disciplinary Action, Suspension, and Dismissal](#). For EHRA employees, actions may include, but are not limited to: warning/reprimand, suspension without pay, demotion, or dismissal. For faculty, sanctions include those listed in the [Faculty Handbook](#). For students, sanctions include those listed in the [Code of Student Life](#).
- E. The university considers the filing of intentionally false reports of prohibited conduct as a violation of this policy and grounds for appropriate disciplinary action.

### **III. Confidentiality**

#### **A. Generally**

The university shall protect the privacy and confidentiality of reporting individuals and individuals who are alleged to have discriminated or harassed, to the extent allowed by law. However, once a university official has actual knowledge of allegations that may be serious enough to constitute a violation of this Policy, the university's legal obligations require it to investigate under the procedures described below. If an individual requests complete confidentiality and does not want such an investigation, he or she should consult with individuals who by law have special professional status, such as mental health counselors, physicians, clergy, or private attorneys. Additionally, in accordance with [Policy 08.420](#), employees may pursue a confidential self-referral to the Employee Assistance Program.

#### **B. Sexual Misconduct Victims**

If a victim of sexual misconduct prefers that the details of an incident be kept confidential, they can speak to professional staff in the following offices:

- UNCW Collaboration on Assault Response & Education (CARE)
- UNCW Counseling Center (for students only)

- Abrons Student Health Center (for students only)
- Employee Assistance Program (for employees only)

Additionally, the Rape Crisis Center, Domestic Violence Shelter and Services and campus ministers will honor confidentiality. Confidential resources may need to share otherwise confidential information in a situation where an imminent danger to a victim or another individual exists in the opinion of the professional staff or administrator. In addition, all university resources are required by North Carolina law to report abuse or neglect upon a child or any disabled person and to report non-identifying statistical information as required by the Clery Act.

Public awareness events such as “Take Back the Night” or other forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the victim initiates a complaint with an appropriate campus official.

Research involving human subjects (which requires approval by UNCW’s Institutional Review Board for the Protection of Human Subjects) may ask subjects to provide personal information in a confidential setting. Information about an incident covered under this Policy may be disclosed by a research subject as part of participation in that research. Notwithstanding Section V.A.3 of this Policy, researchers involved in the research shall not report the incident to the Director of Title IX and Clery Compliance.

#### **IV. Prohibited Conduct**

##### **A. Discrimination**

1. Discrimination constitutes any unlawful distinction, preference, or detriment to an individual as compared to others that is based on one of the characteristics protected by federal law, state law or university policy, as listed in [Policy 02.230 Equal Opportunity and Affirmative Action](#). Those protected characteristics include race, sex (such as gender, gender identity, marital status, and pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, political affiliation, veteran status, military service member status, genetic information, or relationship to other university constituents – except where sex, age, or ability represent bona fide educational or occupational qualifications or where marital status is a statutorily established eligibility criterion for State funded employee benefit programs.
2. Students will be held to the standards of discriminatory conduct as defined in the [Code of Student Life](#), Section II-1-B.

3. Conduct based on a protected characteristic as defined above will constitute discrimination when it is sufficiently serious to unreasonably interfere with or limit:
  - a. An employee's or applicant for employment's access to employment or conditions and benefits of employment;
  - b. A student's or applicant for admission's ability to participate in, access, or benefit from educational programs, services, or activities;
  - c. An authorized volunteer's ability to participate in volunteer activity; or
  - d. A guest's or visitor's ability to participate in, access, or benefit from the University's programs.

#### B. Unlawful Harassment

1. Unlawful harassment can take the form of a variety of actions founded on one of the characteristics protected by federal law, state law or university policy, as listed in [Policy 02.230 Equal Opportunity and Affirmative Action](#). Those protected characteristics include race, sex (such as gender, gender identity, marital status, and pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, political affiliation, veteran status, military service member status, genetic information, or relationship to other university constituents – except where sex, age, or ability represent bona fide educational or occupational qualifications or where marital status is a statutorily established eligibility criterion for State funded employee benefit programs.
2. Students will be held to the standards of harassing conduct as defined in the [Code of Student Life](#), Section II-1-B.
3. Unlawful harassment is a form of discrimination and can consist of:
  - a. Quid pro quo harassment, which consists of unwelcome conduct based on a protected characteristic when:
    - i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, employment decisions, academic standing or receipt of a needed or legitimately requested university service or benefit; or
    - ii. Submission to, or rejection of, such conduct by an individual is used as a basis for decisions affecting such individual in matters of employment, employment decisions, academic decisions (such as grades) or receipt of a needed or legitimately requested university service or benefit.

- b. Hostile environment harassment, which consists of unwelcome conduct based on a protected characteristic when:
  - i. Such conduct is so severe, pervasive, and objectively offensive as to unreasonably interfere with an individual's work, academic performance, or living environment; or
  - ii. Such conduct is so severe, pervasive, and objectively offensive as to create an intimidating, hostile or offensive working, learning or living environment. Hostile environment harassment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct and its severity. A single, serious incident may be sufficient to constitute hostile environment harassment.

## C. Sexual Misconduct

### 1. Definition of Terms

*Acts of gender-based discrimination, harassment, and sexual misconduct, including dating violence, domestic violence, and stalking, will not be tolerated at UNCW.* In order to provide a safe campus community within which all members are valued and respected, policies and procedures for addressing gender-based/sexual misconduct have been established in accordance with Title IX, VAWA, and other regulatory requirements and are detailed herein.

For definitions and procedures applicable to alleged instances of student-on-student sexual misconduct, refer to [Policy 04.130 Student Gender-Based/Sexual Misconduct Policy](#).

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, UNCW has defined categories of sexual misconduct, as stated below, for which disciplinary action under this policy may be imposed. Generally speaking, UNCW considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions for employees or students who commit such offenses. However, UNCW reserves the right to impose any level of sanction, ranging from a written warning up to and including suspension, expulsion, or termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating/domestic) violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular grievance. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved. Sexual misconduct occurs when sexual acts are attempted or committed without consent and/or by force, threat, coercion, or pressure, or through the use of the victim's mental or physical helplessness, of which the assailant was aware or should have been aware.

## **CONSENT**

The definition of consent is central to the recognition of both sexual assault and sexual misconduct. The university defines consent as mutually voluntary permission to engage in sexual activity demonstrated by clear actions and/or words. This decision must be made freely, consciously, knowingly and actively by all participants, as shown by the totality of the circumstances.

### **Intoxication is not an excuse for failure to obtain consent.**

Silence, passivity, acquiescence, or lack of active resistance does not constitute or imply consent on its own.

Previous participation in sexual activity, however recent, does not indicate current consent to participate, and consent to one form of sexual activity does not imply consent to another form of sexual activity.

Consent can be withdrawn at any time.

### **Consent has *not* been obtained in situations where the individual:**

1. is forced, coerced (defined as a unreasonable amount of pressure), manipulated, or has reasonable fear as the result of a threat (such as, the individual or another will be injured if the victim does not submit to the act); or
2. is incapacitated by alcohol, other drugs, sleep, etc. Because consent must be given consciously, sexual activity is prohibited with someone one knows to be, or should know to be, incapacitated. Incapacitation means the individual cannot make rational, reasonable and informed decisions; or
3. has a mental or physical disability which inhibits or precludes his/her ability to give knowing consent.

In North Carolina, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old may be a crime, as well as a violation of this policy, even if the minor willingly engaged in the act.

Violations include:

- a. **Non-Consensual Sexual Intercourse** is defined as any sexual penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.
- b. **Non-Consensual Sexual Contact** is defined as any intentional sexual touching, however slight, with any object by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily

contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

- c. **Sexual Exploitation** refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, in situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-consensual Sexual Intercourse or Non-consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:
- i. sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed);
  - ii. taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent);
  - iii. prostituting another employee or student;
  - iv. engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted infections (STI) and without informing the other person of the infection;
  - v. administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent.

d. Dating Violence

Dating violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

e. Domestic Violence

Domestic violence is defined as a felony or misdemeanor crime of abuse or violence committed by:

- i. a current or former spouse of the victim;
- ii. a person with whom the victim shares a child in common; and/or
- iii. a person who is cohabitating with or has cohabitated with the victim as a spouse.

Dating and domestic violence include, but are not limited to, sexual or physical abuse or the threat of such abuse.

The state definition of domestic violence can be found in [North Carolina General Statute § 50B-1](#), which is applicable to criminal prosecutions for

domestic violence in North Carolina, but may differ from the definition used by the University to address policy violations.

f. Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to feel fear for his or her safety or the safety of others or suffer substantial emotional distress. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. “Course of conduct” is defined as a pattern of two or more acts over a period of time, however short, that evidence a continuity of purpose. Stalking behaviors include, but are not limited to, the following behaviors if they occur when it is known or reasonably should have been known that such behavior or one’s presence is unwanted by a recipient:

- i. non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on Web sites, written letters, gifts, or any other communications that are undesired and/or place another person in fear;
- ii. following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a victim; or
- iii. surveillance and other types of observation, whether by physical proximity or electronic means.

The state definition of stalking can be found in [North Carolina General Statute § 14-277.3A](#), which is applicable to criminal prosecutions for domestic violence in North Carolina, but may differ from the definition used by the university to address policy violations.

g. Sexual Harassment

Sexual harassment is a form of sexual misconduct and is defined as any unwelcome conduct of a sexual nature. It may include, but is not limited to:

- i. unwelcome sexual advances;
- ii. requests for sexual favors; and/or
- iii. other verbal, non-verbal, or physical conduct of a sexual nature.

Sexual harassment may occur in a single incident, as well as in persistent behaviors. Both men and women are protected from sexual harassment, and sexual harassment is prohibited regardless of the sex of the harasser. There are two types of Sexual Harassment:

i. Hostile Environment

Hostile environment sexual harassment includes any situation in which there is harassing conduct that is sufficiently severe,

pervasive/persistent and patently/objectively offensive such that it alters the conditions of education or employment, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint. The determination of whether an environment is "hostile" must be based on the totality of the circumstances. These circumstances may include, but are not limited to:

- the frequency of the conduct
- the nature and severity of the conduct
- whether the conduct was physically threatening
- whether the conduct was humiliating
- the effect of the conduct on the alleged victim's mental or emotional state
- whether the conduct was directed at more than one person
- whether the conduct arose in the context of other discriminatory conduct
- whether the conduct unreasonably interfered with the alleged victim's educational or work performance
- whether the statement falls under an existing exception to the First Amendment, such as true threats and intimidation
- whether the speech or conduct deserves the protections of academic freedom

ii. Quid Pro Quo

Quid pro quo sexual harassment exists when:

- i. there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
- ii. submission to or rejection of such conduct results in adverse educational or employment action.

h. Intimidation

Intimidation is defined as implied threats or acts that cause a reasonable fear of harm in another and includes, but is not limited to:

- i. Threatening to commit a harmful or sexual act upon another person;
- ii. Stalking; or
- iii. Cyber-stalking.

i. Other civil rights offenses, when the act is based upon gender or sex

Other offenses include, but are not limited to:

- i. Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class. Discrimination can also involve treating an individual less favorably because of his or her connection with an

organization or group that is generally associated with people of a certain protected class.

- ii. Hazing, defined as acts, performed voluntarily or involuntarily, likely to cause physical or psychological harm or social ostracism to any person within the UNCW community, when related to the admission, initiation, pledging, joining or any other group-affiliation activity on the basis of actual or perceived membership in a protected class. Hazing is also illegal under North Carolina law.
- iii. Bullying, defined as repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class.

Violation of any other UNCW rules, when such violation is motivated by the actual or perceived membership of the victim on the basis of sex or gender or in a protected class may be pursued using this policy.

#### D. Offenses under the Code of Student Life

The [Code of Student Life](#) lists offenses for which the Vice Chancellor for Student Affairs or designee may initiate disciplinary proceedings against a student, including those related to unlawful harassment and discrimination.

#### E. Retaliation

Retaliation against any person complaining of unlawful discrimination or sexual misconduct or against any person who is a witness to any prohibited conduct is strictly prohibited. Retaliation also qualifies as a violation of this Policy and is grounds for appropriate disciplinary action.

Retaliation is defined as any form, direct or indirect, including through third parties, of intimidation, threat, harassment, reprisal, interference, restraint, coercion or any other type of discrimination in response to an individual's complaint or participation in investigation or conduct processes.

### V. Reporting and Resolution

#### A. Reporting

The university encourages prompt reporting of all perceived violations of this Policy, regardless of who the alleged offender may be.

##### 1. Sexual misconduct, sex-based harassment, or related retaliation

In addition to violating university policy, some instances of sexual misconduct may also constitute criminal activity. Victims are encouraged to inform law enforcement

authorities about instances of sexual misconduct. The chances of a successful law enforcement investigation or of successfully obtaining a civil or criminal protective order through the court system are greatly enhanced if evidence is collected and maintained by law enforcement immediately following the crime. Victims experiencing these forms of sexual misconduct are similarly strongly encouraged to seek medical attention. Victims are encouraged not to bathe, douche, brush their teeth, drink, change clothing or even comb their hair before seeking medical attention. It is only natural to want to do so, but doing so may destroy physical evidence that could be needed later if charges are pursued. Even if one bathes or washes, evidence can still be collected at the hospital, preferably within 72 hours of an assault. If clothes are removed in that time frame, they should be placed in a brown paper bag and brought to the hospital or to law enforcement, depending upon which resource the victim has chosen to utilize. Evidence collection is not essential for pursuing assistance through any campus process, but there are still good reasons to maintain evidence and obtain medical treatment, such as to address the possibility of pregnancy, detect and prevent sexually transmitted infections, and to treat any physical injuries. Evidence collection and emergency treatment is available 24 hours a day at the local emergency rooms. The North Carolina Rape Victims Assistance Program and Crime Victims Compensation Act cover most, if not all, medical costs related to rape. Law enforcement will be called to the hospital, but a victim is not obligated to talk to them.

Victims may inform law enforcement officers without making a criminal or university complaint. If a victim wishes to pursue criminal charges, they may contact UNCW Police at 910-962-2222, or emergency 911. UNCW Police can assist victims in identifying and contacting the appropriate law enforcement agency. Victims who make a criminal complaint may simultaneously pursue a university complaint. The university can assist victims in making a complaint to law enforcement officials. The university can also assist victims with obtaining a court ordered protective order as well.

a. Complaints against students

Employees and students seeking to make a complaint of sexual misconduct by a UNCW student should contact the university's Director of Title IX and Clery Compliance, an advocate in the Collaboration for Assault Response and Education (CARE) Office, University Police, and/or the Office of the Dean of Students. Reports may also be made online at <http://uncw.edu/noharm/>. Alleged student-on-student incidents of gender-based/sexual misconduct will be handled in accordance with [Policy 04.130 Student Gender-Based/Sexual Misconduct](#).

b. Complaints against employees

Allegations of sexual misconduct against a university employee should be reported to the Director of Title IX and Clery Compliance, University Police, Human Resources, or if the complaining party is a student, to the Office of the Dean of

Students. The university will follow the resolution procedures detailed in Section V.C., below.

c. Complaints against student workers

Allegations of sexual misconduct against a student worker may be reported to the Director of Title IX and Clery Compliance, University Police, Human Resources, or if the complaining party is a student, to the Office of the Dean of Students. The university will process the complaint using procedures applicable to the capacity in which the student worker was acting at the time of the alleged misconduct (*i.e.*, student or employee).

2. Discrimination, harassment or related retaliation

a. Complaints involving students

Students seeking to file complaints of discrimination or harassment against UNCW employees, or UNCW employees seeking to file complaints of discrimination or harassment against students, should contact the Office of the Dean of Students. Resolution and disciplinary procedures for complaints against students will be handled by the Dean of Students as detailed in the [Code of Student Life](#).

b. Employee-on-employee complaints

Employees seeking to file complaints of discrimination or harassment against another UNCW employee should contact the Office of Human Resources. The university will follow the resolution procedures detailed in Section V.C., below.

c. Complaints against student workers

Allegations of discrimination or harassment against a student worker may be reported to the Office of Human Resources or the Office of the Dean of Students. The university will process the complaint using procedures applicable to the capacity in which the student worker was acting at the time of the alleged harassment (*i.e.*, student or employee).

3. Responsibilities of employees

Any university employee, faculty/instructor, staff, administrator or person working on behalf of an officially sanctioned university office, event or activity, including resident assistants (“responsible employees”), receiving notice of suspected or potential sexual misconduct is required to file a report with the Director of Title IX and Clery Compliance within one (1) business day of receiving the notice, unless that notice was communicated to an official who can provide professional confidentiality (*see* “Confidentiality” above). Clery Act crime statistic and timely

warning reporting duties must also be observed in accordance with [Policy 05.502 Crime Reporting](#).

Vice Chancellors, deans, directors, department chairs, or supervisors who become aware of specific allegations of discrimination or harassment must report the allegations promptly to the Associate Vice Chair of Human Resources, if the alleged offender is an employee, or to the Dean of Students, if the alleged offender is a student.

## B. Optional Informal or Initial Actions; Interim Measures

1. Depending on the type or severity of offense, initial actions may include the following:
  - a. Telling the alleged offender his or her behavior is unwelcome and must stop.
  - b. Asking for an apology and a commitment that the behavior will stop.
  - c. Sending a copy of this policy to the alleged offender.
  - d. Writing to the alleged offender regarding the conduct, pointing out the effects of such behavior, and explaining the behavior change desired.
  - e. Having the pertinent supervisor counsel the alleged offender about appropriate behaviors and conduct expectations.
  - f. Requesting a fact-finding investigation.
2. Some of these initial actions will never be appropriate for allegations of sexual misconduct. Additionally, the university may provide interim measures to ensure that there is no interference with the educational or employment opportunities of the complaining party. These interim measures may include, but are not limited to, an institutional order of no contact, no trespass order, parking accommodation, transportation assistance or security escorts, and changes in academic or relocation of work space, among other options. The complaining party may also receive services including an EAP referral, assistance from the CARE office, as well as connections to community resources such as the Rape Crisis Center and the Domestic Violence Shelter and Services. Under Title IX, the University is legally obligated to take prompt and remedial measures to end sex-based harassment, even if the affected individual does not make a complaint or otherwise request action to be taken.
3. In deciding whether to pursue informal means, including mediation, the complaining individual is encouraged to seek the assistance of the Director of Title IX and Clery Compliance, or representatives of the Office of the Dean of

Students, Housing and Residence Life Staff, Student Health Services, the Counseling Center, or Human Resources, as appropriate. These offices are available to assist the complaining party in crafting the message to send to the offending individual, as well as recommending other informal mechanisms and setting up mediation. Whichever office the affected individual elects to discuss his/her concerns with, the issue of confidentiality should be addressed before specific facts or identities are disclosed due to the university's legal obligations to investigate all allegations that may constitute harassment as defined in this Policy.

4. In response to allegations of sexual assault, dating violence, domestic violence, and stalking, the University shall refer employee-complainants to appropriate support resources such as CARE. Student-complainants shall be referred in accordance with [Policy 04.130 Student Gender-Based/Sexual Misconduct](#).

### C. Formal Resolution of Complaints against Employees

#### 1. Initiating a Formal Complaint

- a. If the offending behavior continues after the initial response, or if the severity of the behavior warrants immediate initiation of a fact-finding investigation (such as alleged instances of sexual misconduct), the complainant or witness may make a formal complaint.
- b. A complaint must be presented within ninety (90) calendar days of the alleged incident to the appropriate office as listed in Section V.A. above. Such office shall forward the complaint to Human Resources. If filed later than ninety calendar (90) days, the Associate Vice Chancellor of Human Resources may extend the time limit based on extenuating circumstances and at his/her sole discretion.
- c. Complainants are not required to provide a signed, written statement describing their complaint, though such documentation is strongly encouraged. If the complainant conveys the allegations verbally, the Associate Vice Chancellor of Human Resources or designee shall document the complaint and have the complainant review and sign the documentation to indicate that it is accurate and complete. Upon receipt of allegations involving sexual misconduct, the Director of Title IX and Clery Compliance shall be notified.

#### 2. Investigation

- a. The Associate Vice Chancellor of Human Resources or designee shall determine whether the complainant's allegations fall within the scope of this Policy. If so, the Associate Vice Chancellor of Human Resources or designee(s) shall investigate promptly. All proceedings will include a

prompt, fair, and impartial process from the initial investigation to the final result. Proceedings should be completed within sixty (60) days of receiving a formal complaint. Reasonable extensions of time for good cause are permissible upon written notice to both parties of the delay and the reason for the delay.

- b. The Associate Vice Chancellor of Human Resources or designee shall form a fact finding team of two impartial and unbiased individuals who shall interview the complainant and the respondent. Witnesses should also be interviewed, and any relevant documentary evidence shall be reviewed. The fact finding team shall take notes of all individuals who are interviewed. The fact finding team shall instruct individuals that retaliation is prohibited and is a violation of university policy and the law. The individuals shall also be instructed about the confidentiality and privacy parameters of the investigation. In cases involving sexual assault, dating violence, domestic violence, and stalking, the fact finding team will undergo annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, as well as how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
- c. In general, both the complainant and the respondent may be accompanied when interviewed by another member of the university community, so long as the individual does not participate in or interfere with the interview. This person's role is simply as an observer. Representation by legal counsel during the interview is prohibited, except in cases involving sexual assault, dating violence, domestic violence, and stalking, where both the complainant and respondent may be accompanied by any advisor of their choice, including legal counsel, so long as the individual does not interfere with the interview. In no case may an advisor include any individual that could serve as a witness in the process.

### 3. Findings and Determination

- a. Upon completion of the investigation, the fact finding team shall prepare a written report of the factual findings. The Associate Vice Chancellor of Human Resources shall forward the report to the pertinent senior officer in the unit where the respondent is employed. The senior officer, in consultation with the General Counsel, shall make a determination of whether a policy violation has occurred. The standard of proof shall be a preponderance of the evidence, which means that there is greater than a 50% chance that the respondent is responsible for the alleged violation.
- b. In the event that a violation of this Policy is found, the pertinent senior officer shall determine the appropriate disciplinary action, in consultation with the Associate Vice Chancellor of Human Resources and General Counsel, in accordance with the appropriate disciplinary procedures pertaining to the

affected individual. Any prior violations of this policy involving the respondent shall be considered in any disciplinary action.

- c. The complainant and the respondent shall be informed within three (3) business days by the Associate Vice Chancellor of Human Resources or pertinent senior officer, in writing, when a decision has been reached. Results of the investigation, the fact finding report, and any subsequent disciplinary action shall be kept confidential to the extent allowed by the North Carolina Human Resources Act (G.S. §§ 126-22 *et. seq.*) and the State Human Resources Commission Personnel Records Policy, or, in the case of student-workers, the Family Educational Rights and Privacy Act (“FERPA”). The administration of any disciplinary action will be the responsibility of the pertinent senior officer in the employee’s division, after consultation with the Director of Staff Development and Employee Relations in Human Resources and in accordance with applicable procedures.

## **VI. Record Keeping**

The Office of Human Resources shall retain all investigation records of employees in a confidential file. The Office of the Dean of Students and/or the Office of Title IX and Clery Compliance shall retain all investigation records of students.

## **VII. Appeal Procedures**

- A. The grounds for appealing a decision reached pursuant to the procedures in [Policy 04.130 Student Gender-Based/Sexual Misconduct](#) are detailed in that Policy.
- B. The grounds for appealing the decision reached pursuant to the procedures under Section V.C., by either the complainant or the respondent, may be for only these reasons:
  1. The behavior is ongoing;
  2. The remedy was not implemented;
  3. Material procedural irregularities occurred during the investigation; or
  4. New evidence has been discovered that had not been available during the investigation and that may have a substantial impact on the outcome of the investigation.
- C. Dissatisfaction with the university’s decision from the formal resolution procedures is not grounds for an appeal.
- D. Parties seeking to appeal the decision on approved grounds must file a written appeal statement within thirty (30) calendar days after notice of the decision. Appeal statements must include a copy of the original complaint, a summary of efforts to resolve the behavior, and the grounds for the appeal.

- E. Respondents against whom disciplinary action has been taken must follow the appeal procedures in accordance with [Policy 08.520 SHRA Employee Appeals and Grievances](#), [Policy 08.521 EHRA Review and Appeal Procedures](#), or [Section 603 of the Code of the Board of Governors](#), as appropriate, to appeal the imposition of such disciplinary action.
  
- F. A Vice Chancellor unaffiliated with the investigation, or designee, shall review the appeal with General Counsel and the Associate Vice Chancellor of Human Resources. The Vice Chancellor's decision must be in writing and sent to the appellant as soon as practicable in a matter that ensures receipt. This decision constitutes a final university decision.