

Interim Title IX Regulation

The University of North Carolina School of the Arts (“University”) does not tolerate sexual misconduct, including sexual harassment. Such conduct is harmful to the well-being of our community members, our learning and working environments, and the collegial relationships among students, faculty, and staff. All forms of prohibited conduct under this regulation are regarded as serious University offenses, and violations may result in discipline, including the possibility of separation from the University. State and federal laws may also address conduct that meet the University’s definitions of prohibited conduct, and criminal prosecution may take place independently of any disciplinary action instituted by the University.

This Interim Title IX Regulation (“Title IX Regulation”) is based on definitions set forth in regulations promulgated by the U.S. Department of Education under Title IX of the Education Amendments Act of 1972, and updated most recently on May 6, 2020. As a result of the updated regulatory guidance, this regulation limits the scope of sexual misconduct covered by this Title IX Regulation to, among other things, conduct that occurs within the United States and conduct that occurs within the University’s education program or activity (a concept further defined and discussed below).

In order to address incidents of sexual misconduct that do not fall within the definition of Title IX Regulation, the University has two regulations that address sexual misconduct: (1) this regulation and (2) the Prohibited Discrimination, Harassment, and Related Misconduct Regulation (“Prohibited Discrimination Regulation”). These regulations are interrelated and alleged behavior will be evaluated by the Title IX Coordinator to determine the relevant regulation to apply to any allegations involving sexual harassment. If the allegations forming the basis of a formal complaint (defined below), if substantiated, would constitute prohibited conduct under both regulations, then the grievance process set forth in this Title IX Regulation will be applied in the investigation and adjudication of the allegations.

The Prohibited Discrimination Regulation applies only to certain conduct, as defined under that regulation. Specifically, the Prohibited Discrimination Regulation applies to forms of sexual misconduct that do not fall under the scope of the Title IX Regulation. The Prohibited Discrimination Regulation also applies to certain conduct that would otherwise be prohibited under the Title IX Regulation (e.g., Sexual Assault, Domestic Violence, Dating Violence, and Stalking under the Title IX Regulation), but which must be dismissed under the Title IX Regulation because they do not meet the jurisdictional requirements.

The University will respond to reports or formal complaints of conduct prohibited under this regulation with measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects of such conduct on campus or in University-related programs or activities. The University will not deprive an individual of rights guaranteed under federal and

state law (or federal and state anti-discrimination provisions; or federal and state law prohibiting discrimination on the basis of sex) when responding to any claim under the Title IX Regulation.

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I. The Title IX Coordinator

The Title IX Coordinator oversees the University's compliance with Title IX and all University conduct regulations related to sexual misconduct.

The Title IX Coordinator will be informed of all reports or formal complaints of violations of this regulation, and oversees the University's centralized response to ensure compliance with Title IX and the 2013 Amendments to the Violence Against Women Act (VAWA). The Title IX Coordinator's responsibilities include (but are not limited to):

- Communicating with all members of the University community regarding Title IX and VAWA, and providing information about how individuals may access their rights;
- Reviewing applicable University regulations to ensure institutional compliance with Title IX and VAWA;
- Monitoring the University's administration of its own applicable regulations, including this regulation and the Prohibited Discrimination Regulation and all related record keeping, timeframes, and other procedural requirements;
- Conducting training regarding Title IX, VAWA, and prohibited conduct defined in this regulation and related regulations; and
- Responding to any report or formal complaint regarding conduct that violates this regulation. For any report of which the University has actual knowledge (and any formal complaint), the Title IX Coordinator shall oversee and implement the explanation and provision of any supportive measures. For any formal complaint, the Title IX Coordinator oversees the investigation and resolution of such alleged misconduct, directs the provision of any additional supportive measures, and monitors the administration of any related appeal.

The Title IX Coordinator may delegate certain responsibilities under this regulation to designated staff and administrators, who will be appropriately trained.

The Title IX Coordinator's contact information is as follows:

Valerie Thelen
Chief Compliance Officer and Title IX Coordinator
UNCSA Library Room 2110
Winston-Salem, North Carolina, 27127
thelenv@uncsa.edu
336-932-3917

The University provides the contact information of the Title IX Coordinator to students, faculty, staff, applicants for admission, applicants for employment, and or professional organizations agreements with the University.

II. Definitions

The following definitions clarify key terminology in this regulation.

Complainant refers to the individual(s) who is alleged to be the victim of conduct that could constitute prohibited conduct under the Title IX Regulation

Formal complaint refers to a document filed by a complainant (meaning a document or electronic submission (such as by electronic mail) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the individual filing the formal complaint) alleging a violation of the Title IX Regulation against a respondent and requesting that the University investigate the allegation of the violation. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information provided in this regulation, and by any additional method identified in this regulation. A **formal complaint** may also refer to a document signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a respondent. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

Party or parties refer to the complainant(s) and the respondent(s).

Report refers to information brought to the attention of a member of staff or faculty alleging conduct prohibited under this regulation; a report is not considered to be a formal complaint. A party may bring a report and then subsequently file a formal complaint.

Respondent refers to the individual(s) who has been alleged to be the perpetrator of conduct that could constitute a violation of the Title IX Regulation.

Third party refers to any individual who is not a University student, member of faculty or staff, (e.g., vendors, alumni/ae, or local residents).

Witness refers to any individual who shares information relating to an allegation of prohibited conduct under this regulation.

III. Prohibited Conduct

This regulation encompasses all of the prohibited conduct described below that occurs on the basis of sex and meet all of the following requirements:

- Occurs within the United States; and
- Occurs within the University's education program or activity, meaning a) locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the violation of the Title IX Regulation occurs, and b)

any building owned or controlled by a student organization that is officially recognized by the University; and

- At the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity at the University.

Allegations of sexual misconduct that do not fall under this regulation because they do not constitute prohibited conduct as defined in this section may constitute violations of the Prohibited Discrimination Regulation or Student Code of Conduct.

In determining whether alleged conduct violates this regulation, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Any of the prohibited conduct defined in this regulation can be committed by individuals of any gender identity or sexual orientation, and it can occur between individuals of the same or different gender identity or orientation. It can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

The prohibited behaviors listed below are serious offenses and will result in University discipline. Prohibited conduct involving force, duress, or inducement of incapacitation, or where the perpetrator has deliberately taken advantage of another individual's state of incapacitation, will be deemed especially egregious and may result in expulsion or termination of employment. The respondent's consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation under this regulation.

Prohibited behaviors are:

- **Quid Pro Quo Sexual Harassment:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- **Title IX Sexual Harassment:** Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the University's education program or activity;
- **Sexual Assault:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. This includes the following:
 - **Rape:** Sexual intercourse involving penetration without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
 - **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is

incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.
- **Domestic Violence:** A felony or misdemeanor crime of violence committed: (a) by a current or former spouse or intimate partner of the victim; (b) by an individual with whom the victim shares a child in common; (c) by an individual who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (d) by an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred; (e) by any other individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred. For purposes of this regulation, an intimate partner is defined as an individual with whom one has or had a short- or long-term relationship that provides romantic and/or physical intimacy or emotional dependence. Intimate relationships can occur between individuals of the same gender or different genders and may include (but are not limited to) marriages, civil unions, dating relationships, "hook-up" relationships, relationships in which partners are characterized as "girlfriends" or "boyfriends," and relationships between individuals with a child in common.
- **Dating Violence:** Violence committed by an individual 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 individual's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship. This includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- **Stalking:** Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to: (a) fear for the individual's safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of the Stalking definition: *Course of conduct* means two or more acts, including acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property. *Reasonable person* means a reasonable person under similar

circumstances and with similar identities to the victim. *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- **Retaliation under this regulation:** No individual may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this regulation or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this regulation.

The University retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, proceeding, or hearing under this regulation, but will not conclude that any individual has made a materially false statement in bad faith solely based on the determination regarding responsibility.

Complaints alleging retaliation under this Title IX regulation, including for the exercise of rights under this regulation, must be filed in accordance with this regulation and will be addressed promptly and equitably. Where the individual allegedly retaliating is not affiliated with the University and not otherwise subject to its regulations, the University will process the complaint and take appropriate measures.

Notwithstanding the above, the exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this regulation; and charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this regulation does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

For purposes of this regulation, consent is defined as follows:

- **Consent and Incapacitation.**

An affirmative decision to engage in mutually acceptable sexual activity freely given by clear actions and/or words. Consent may not be inferred from silence, passivity, or lack of active resistance alone.

- A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- An individual is unable to freely give consent when the individual is incapacitated (arising, for example, from the use of alcohol or other drugs or when the individual is passed out, asleep, unconscious, or mentally or physically impaired).
- The perspective of a reasonable person will be the basis for determining whether a respondent knew, or reasonably should have known, whether a complainant was able to freely give consent and whether consent was given. Additionally,

being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sexual misconduct.

- Consent cannot be obtained by coercion or force. Coercion or force includes conduct, intimidation, and express or implied threats of physical or emotional harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to persuade or compel someone to engage in Sexual Contact. Examples of coercion or force include causing the deliberate incapacitation of another person; conditioning an academic benefit or employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal sensitive information if the other party does not engage in the sexual contact.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- The existence of a prior or current relationship does not, in itself, constitute consent.
- Consent can be withdrawn or modified at any time.
- Consent is not implicit in an individual's manner of dress.
- Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
- Silence, passivity, or lack of resistance does not necessarily constitute consent.
- Initiation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent.

For purposes of this regulation, **incapacitation** (or incapacity) is the state in which an individual's perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where an individual knows or ought reasonably to have understood that the individual is incapacitated, constitutes a violation of this regulation.

IV. Assessment and Dismissal of Formal Complaints

When the Title IX Coordinator receives a report that involves allegations that could be a violation of the Title IX Regulation, they will first respond to any immediate health or safety concerns raised. The Title IX Coordinator will then conduct an initial assessment for the sole purpose of determining whether the alleged conduct, if substantiated, would constitute prohibited conduct

under this regulation. The University will seek to complete this initial assessment within ten (10) business days of receipt of the formal complaint. Following the initial assessment, the Title IX Coordinator may take any of the following actions:

- If the allegations forming the basis of the formal complaint would, if substantiated, constitute prohibited conduct as defined in this regulation, the Title IX Coordinator shall implement appropriate supportive measures. In addition, the Title IX Coordinator shall initiate an investigation of the allegations under this regulation in a formal complaint, as described in section IV. However, if the Title IX Coordinator deems the formal complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process, as described in section IV.
- If the allegations forming the basis of the formal complaint would not, if substantiated, constitute prohibited conduct as defined in this regulation, the Title IX Coordinator shall dismiss the formal complaint from the Title IX Regulation grievance process (and either party may appeal this dismissal, as discussed below). However, if appropriate, the Title IX Coordinator may refer the matter to the Prohibited Discrimination Regulation process or to another office for review; or, if the Title IX Coordinator deems the formal complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process.

In addition, at any time prior to the hearing, the University may dismiss a formal complaint if:

- The complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering sufficient evidence to reach a determination as to the formal complaint or the allegations therein.
- Upon dismissal, the University shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties via electronic format. Both parties will have equal right to appeal the dismissal through the appeal process.

The determination regarding dismissal becomes final either on the date that the parties are provided with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Once final, a complainant cannot file a formal complaint under this regulation concerning the same alleged conduct.

V. Confidentiality, Privacy, and Related Responsibilities

Issues of privacy and confidentiality play important roles in this regulation, and may affect individuals differently. Privacy and confidentiality are related but distinct terms that are defined below.

In some circumstances, the reporting responsibilities of University faculty or staff, or the University's responsibility to investigate, may conflict with the preferences of the complainant and/or respondent with regard to privacy and confidentiality. Individuals are encouraged to familiarize themselves with their options and responsibilities, and make use of Confidential Resources, if applicable, in determining their preferred course of action.

Requests for confidentiality or use of anonymous reporting may limit the University's ability to conduct an investigation.

1. Confidentiality and Confidential Resources

The term "confidentiality" refers to the circumstances under which information will or will not be disclosed to others.

Several campus professionals are designated confidential resources, who are not obligated to report information that is provided to them. This allows individuals to explore their options in a non-pressured environment while they make informed decisions. There may be exceptions in cases involving child abuse, imminent risk of serious harm, emergent hospitalization, or a court order. In addition, non-identifying information about violations of the Title IX Regulation may be submitted to the University Police Department for purposes of the anonymous statistical reporting under the Clery Act.

An individual who is not prepared to make a report or formal complaint, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact a confidential resource.

Confidential Resources:

Student Support Resources

The University's Counseling Services [336-770-3288](tel:336-770-3288) are available to provide confidential assistance to students.

Counseling Services: [336-770-3288](tel:336-770-3288) (After hours number Healthlink) [1-888-267-3675](tel:1-888-267-3675).

Location: UNCSA Student Health Services in the Wellness Center is located in the upper level of [Hanes Student Commons](#).

Employee Support Resources

The University's Ombuds is available to provide confidential assistance to faculty and staff.

Joshua Canzona

Ombuds

Campus email address: ombuds@uncsa.edu

Gmail address: saombuds@gmail.com

Phone: [336-480-7203](tel:336-480-7203)

The Ombuds Office is located in the Kilpatrick Townsend building complex at: 1001 W. Fourth Street, Winston-Salem, NC 27101.

Employees may also seek help through the Employee Assistance Program (EAP). You can access the EAP program online or via telephone:

Call: [888-311-4327](tel:888-311-4327) or TDD: 800-697-0353

Go online: guidanceresources.com

Your UNCSA Web ID: UNCSA

In light of the University's obligation to respond promptly and effectively to individuals alleged to be victimized by a violation of the Title IX Regulation, all University faculty and staff who are not designated confidential resources are required to notify the Title IX Coordinator of suspected violations of this regulation, and cannot guarantee the confidentiality of a report under this regulation.

2. Confidentiality Rights of Complainants and Respondents

While complainants, respondents, and witnesses involved in the grievance process under this regulation are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, complainants and respondents are not restricted from discussing the allegations under investigation.

Medical, psychological, and similar treatment records are privileged and confidential documents that cannot be accessed or used for a grievance process under this regulation without the relevant party's voluntary, written consent.

3. Privacy

The term "privacy" refers to the discretion that will be exercised by the University in the course of any investigation or grievance processes under this regulation.

In all proceedings under this regulation, the University will take into consideration the privacy of the parties to the extent possible.

In cases involving students, the Title IX Coordinator may notify University staff or faculty on a need-to-know basis of the existence of the report and/or formal complaint for the purpose of overseeing compliance with this regulation and addressing any concerns related to educational and residential life. While not bound by confidentiality, these individuals will be discreet and will respect the privacy of those involved in the process.

In accordance with federal regulations, the University will keep confidential the identity of any individual who has made a report or formal complaint under this regulation, including any complainant, any individual who has been reported to be the perpetrator, any respondent, and any witness, except as may be permitted by Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of conducting any investigation or hearing under this regulation.

Any additional disclosure by the University of information related to the report or formal complaint may be made if consistent with FERPA or the Title IX requirements. In addition, governmental agencies, may mandate certain reporting related to prohibited conduct under this regulation involving University employees or students.

4. Release of Information

If the University Police Department becomes aware of a serious and continuing threat to the campus community, they may issue a timely warning in accordance with federal regulation to protect the health or safety of the community. The University Police Department may also publish a reported incident in the daily crime log or annual security report. In addition, the University may also share non-identifying information, including data about outcomes and sanctions, in aggregate form. The University will not disclose the name or other personally identifiable information of the complainant unless it has received the express consent of the complainant or unless the release of such information is consistent with legal requirements or mandated by law.

VI. Options for Complainants, Respondents, and Other Reporting Individuals

A complainant, respondent, or witness has many options, including counseling and support services. Information regarding contact information for local law enforcement as well as contact information for confidential resources that are available to provide support to parties and witnesses are listed below.

After consulting a confidential resource as appropriate, a complainant may:

- Request supportive measures from the Title IX Coordinator;
- File a formal complaint with the Title IX Coordinator, thereby invoking the University's internal grievance process;
- Contact the University Police Department or local law enforcement to file a criminal complaint and preserve physical evidence; the University Police Department can assist a complainant who decides to pursue a criminal process if local law enforcement if the incident does not fall under University Police Department's jurisdiction.

An individual may pursue some or all of these steps at the same time. When initiating any of the above, an individual does not need to know whether they wish to request any particular course of

action, nor how to label what happened. Before or during this decision-making process, complainants and other reporting individuals are encouraged to consult a confidential resource.

1. Employees' Responsibility to Report

In emergency situations, if there is a suspected crime in progress or imminent or serious threats to the safety of anyone, employees must immediately contact the Department of Public Safety by dialing 911.

In non-emergency situations, employees (other than those formally designated as confidential resources under this regulation) must promptly report suspected violations of this regulation to the Title IX Coordinator. Some students with special responsibilities, including Residential Assistants, must promptly report alleged violations of this regulation to their supervisors in Housing and Residence Life, who will then consult with the Title IX Coordinator.

Students are encouraged to report any suspected violation of this regulation.

2. Anonymous Reporting

If a reporting individual makes an anonymous report, Title IX Coordinator will consider how to proceed, taking into account the individual's articulated concerns; the best interests of the University community; fair treatment of all individuals involved; and the University's obligations under Title IX.

A complainant cannot file a formal complaint anonymously.

Any individual may make an anonymous report concerning a violation of this regulation through the online reporting form. Anonymous reporting does not satisfy employees' reporting obligation. However, if the reporter provides limited information, the University may be limited in its ability to take action.

3. Timeliness of Report

Complainants and other reporting individuals are encouraged to report any violation of this regulation as soon as possible in order to maximize the University's ability to respond promptly and effectively. Reports and formal complaints may be made at any time without regard to how much time has elapsed since the incident(s) in question. If the respondent is no longer a student or employee at the time of the report or formal complaint, the University may not be in a position to gather evidence sufficient to reach a determination as to the formal complaint and/or the University may not be able to take disciplinary action against the respondent. However, the University will still seek to provide support for the complainant and seek to take steps to end the prohibited behavior, prevent its recurrence, and address its effects.

4. Amnesty

In order to encourage reports of conduct that is prohibited under this regulation, the University may offer leniency with respect to other violations which may come to light as a result of such reports, depending on the circumstances involved.

VII. Supportive Measures for Complainants and Respondents

Upon receipt of a report or formal complaint of a violation of this regulation, the University, through the Title IX Coordinator, will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The University will also consider supportive measures, as appropriate and reasonably available, for the respondent.

These supportive measures are designed to restore or preserve equal access to the University's educational and working programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties and the broader University community, or deter sexual harassment. While a supportive measure may impose some restrictions on a party, it will not unreasonably burden them. The University may provide supportive measures to the complainant or respondent, as appropriate, as reasonably available, and will do so without fee or charge, regardless of whether the complainant seeks formal disciplinary action. Once supportive measures are approved, the parties or affected individuals will be notified in writing of the supportive measures. The University will maintain any supportive measures provided to the complainant or respondent as confidential to the extent possible.

Supportive measures may include:

- counseling;
- extensions of deadlines or other course-related adjustments;
- modifications of work or class schedules;
- campus escort services;
- mutual no-contact directives between the parties;
- changes in work or housing locations;
- leaves of absence;
- increased security and monitoring of certain areas of the campus; and/or
- any other measure that can be used to achieve the goals of this regulation.

Requests for supportive measures may be made by or on behalf of the complainant or respondent to any University official, including the Title IX Coordinator. The Title IX Coordinator is

responsible for ensuring the implementation of supportive measures and coordinating the University's response with the appropriate offices on campus.

All individuals are encouraged to report concerns about the failure of another to abide by any restrictions imposed by a supportive measure. The University will take immediate action to enforce a previously implemented measure and disciplinary sanctions can be imposed for failing to abide by a University-imposed measure.

VIII. Emergency Removal

In connection with this regulation, whether or not a grievance process is underway, the University may summarily remove an individual from an education program or activity on an emergency basis, after undertaking an individualized safety and risk analysis, and upon the determination that the individual poses an immediate threat to the physical health or safety of any student or other individual (including themselves, the respondent, the complainant, or any other individual). In these situations, the University will provide the individual with notice and an opportunity to challenge the decision immediately following the removal.

IX. Informal Resolution Process

Subject to the consent of the parties and the approval of the Title IX Coordinator, the University permits informal resolution processes in cases in which a formal complaint has been filed with the Title IX Coordinator. Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent; the informal resolution process is not available in matters involving a student complainant and a faculty/staff respondent.

The informal resolution process is a voluntary, remedies-based process designed to provide parties with an option to resolve disputes with other students in a forum that is separate and distinct from the University's formal grievance processes under this regulation. The purpose of the informal resolution process is to address the conduct which has been reported by the complainant, and place the parties in a position to pursue their academic and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a respondent, and the resolution will not appear on the respondent's disciplinary record.

The University may facilitate the informal resolution process prior to conducting a hearing. Before the informal resolution process is used, both parties must provide voluntary, written consent to the informal resolution process and must receive written notice disclosing: the allegations, the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations), and

any outcomes resulting from participating in the informal resolution process (including the records that will be maintained or could be shared). At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX Regulation grievance process with respect to the formal complaint.

The University will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints under the Title IX Regulation. Similarly, the University will not require, encourage, or discourage the parties from participating in the informal resolution process.

X. Grievance Procedures for Title IX Complaints, In General

The University is committed to providing a prompt and impartial investigation and adjudication of all formal complaints alleging violations of this regulation. During the grievance process, both parties (complainant and respondent) have equal rights to participate.

1. Conflict of Interest

All individuals who have responsibilities in administering the grievance process under this regulation must be free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent and will be trained as provided by federal regulations. Parties will be notified at the appropriate junctures of the identities of the individuals serving as investigators and others in the adjudication or appeal process. A party who has concerns that one or more of the individuals in the process has conflicting interest or is biased must report those concerns to the Title IX Coordinator within 48 hours of being notified of their identities and include a brief explanation of the basis for the conflict or bias concern. The Title IX Coordinator will assess the allegations of conflict or bias to determine whether or not the identified individual(s) can fulfill their duties in an impartial way. If the Title IX Coordinator concludes that the facts and circumstances support the claim of conflict or bias, the pertinent individual(s) will not participate in the case.

2. Responsibility to Review Reports and Formal Complaints

In order to protect the safety of the campus community, the Title IX Coordinator may review reports of violations of this regulation even absent the filing of a formal complaint, or under certain circumstances, even if a formal complaint has been withdrawn. In limited circumstances, the Title IX Coordinator may need to themselves file a formal complaint and proceed with an investigation even if a complainant specifically requests that the matter not be pursued. In such a circumstance, the Title IX Coordinator will take into account the complainant's articulated concerns, the best interests of the University community, fair treatment of all individuals involved, and the University's obligations under Title IX.

Under this regulation, an investigation and adjudication may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this regulation has occurred.

3. Presumption of Good Faith Reporting

The University presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this regulation or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

4. Presumption of Non-Responsibility

The respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the grievance process.

5. Honesty and Cooperation during Grievance Process

The University expects all members of the University community to be honest and cooperative in their official dealings with the University under this regulation. In this regard, individuals are expected to acknowledge requests from University officials for information in a timely fashion and to make themselves available for meetings with University officials or any officials acting on behalf of the University; any student or member of the faculty or staff who fails to do so may be subject to discipline. However, parties and witnesses may choose not to attend the hearing or may choose not to participate in cross examination at the hearing.

6. Advisers

Throughout the grievance process, each party may have an adviser of their choice; parties may change their adviser at any time during the grievance process. An adviser is an individual chosen by a complainant or a respondent to provide guidance during the grievance process. An adviser may be a member or non-member of the University community, and may be an attorney. The adviser may attend the hearing and may conduct cross-examination of the other party and any witnesses at the hearing; otherwise, the adviser may not actively participate in the hearing.

If a party does not have an adviser present at the hearing to conduct cross examination, the University will provide without fee or charge to that party an adviser selected by the University to conduct cross-examination of the other party and/or any witnesses.

Any individual who serves as an adviser is expected to make themselves available for meetings and interviews throughout the investigation process, as well as the hearing, as scheduled by the University. The University (including any official acting on behalf of the University such as an investigator or a hearing panelist) has the right at all times to determine what constitutes appropriate behavior on the part of an adviser and to take appropriate steps to ensure compliance with this regulation.

7. Prior Sexual Behavior

The complainant's prior sexual behavior are not relevant and will not be used during the grievance process, unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

8. Consolidation

The Title IX Coordinator has the discretion to consolidate multiple formal complaints as to allegations of Title IX Regulation violations against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of Title IX Regulation violations arise out of the same facts or circumstances.

9. Investigation of Allegations of Violations of Other University Regulations

a. Allegations under the Prohibited Discrimination Regulation

When an initial assessment or investigation under this regulation identifies additional related possible violations of the Prohibited Discrimination Regulation by the same party(ies), the grievance process set forth in the Title IX Regulation and procedures will apply to all allegations. Under such circumstances, the parties will be provided with written notice containing the following information: (a) the alleged prohibited conduct, and (b) the regulation(ies) under which alleged prohibited conduct falls.

b. Allegations under Other University Regulations

When an initial assessment or investigation under this regulation identifies additional related possible violations of University regulations (other than the Prohibited Discrimination Regulation, as described above) by the same party(ies) that would normally be handled by another responsible office, the Title IX Coordinator, with the approval of that responsible office, may direct investigators under this regulation to investigate such other possible violations at the same time that they investigate the allegations covered by this regulation. Under such circumstances, the records from the investigation of the non-Title IX Regulation matter shall be provided to the office responsible for adjudicating that non-Title IX Regulation matter in accordance with applicable University regulations and procedures.

10. Procedures Where One Party Is a Member of the University Community and the Other Party Is a Non-Member of the University Community

When a third party, (i.e., a non-member of our University community, which could include, for example, alumni) is a party under this regulation, the University will use disciplinary procedures that are generally consistent with the disciplinary procedures described in this regulation, appropriately modified based on the particular circumstances of the case and taking into account privacy requirements and the like. In no case will a member of our community (i.e., current student,

faculty member, or staff member) be afforded lesser rights or lesser opportunities to participate in the disciplinary proceeding than the non-member of the University community.

XI. Investigation and Adjudication In Student Respondent Cases

1. Timing

The University will seek to complete the investigation and adjudication within ninety (90) business days after the investigators' first interview of the complainant. Investigations will proceed according to the aforementioned timeframe during the summer and at other times when the University is not in session. Timeframes for all phases of the grievance process, including the investigation, the hearing, and any related appeal, apply equally to both parties.

There may be circumstances that require the extension of time frames for good cause. Time frames may be extended to ensure the integrity and completeness of the investigation or adjudication, comply with a request by external law enforcement, accommodate the absence of a party, adviser, or witness, or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The University will notify the parties in writing of any extension of the time frames for good cause, and the reason for the extension.

In accordance with University regulation, the University will review requests for language assistance and accommodation of disabilities throughout the investigation and adjudication process.

Although cooperation with law enforcement may require the University to temporarily suspend the fact-finding aspect of an investigation, under such circumstances, the University will promptly resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide supportive measures for the complainant or respondent. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this regulation has occurred.

2. Investigation

If the Title IX Coordinator has determined, following an initial assessment, that an investigation is appropriate, the Title IX Coordinator or a designee will act as the investigator.

a. Notice of Investigation

Following the receipt and review of the formal complaint by the Title IX Coordinator, and it being determined that the matter properly falls under this Title IX Regulation, the parties will be informed in writing of the initiation of the investigation. The written information shall include:

- The identities of the parties, if known.

- A concise summary of the alleged conduct at issue (including when and where it occurred, if known).
- Notice of the allegations potentially constituting Title IX Regulation violations.
- A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement informing the parties that they may have an adviser of their choice, who may be, but is not required to be, an attorney.
- A statement informing the parties that they may request to inspect and review evidence.
- A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process may constitute a violation of University regulation.
- Information regarding the applicable grievance procedures, including the informal resolution process.

If, during the investigation, additional information is disclosed that may also constitute prohibited conduct under this regulation, the respondent and complainant will be informed in writing that such additional information will be included in the grievance process.

b. Collection of Evidence

The investigators will collect information from each party. While the complainant and the respondent are not restricted from gathering and presenting relevant evidence, the investigators are responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given an equal opportunity to suggest witnesses; provide other relevant information, such as documents, communications, photographs, and other evidence; and suggest questions to be posed to the other party or witnesses. Parties and witnesses are expected to provide all available relevant evidence to the investigators during the investigation. If a party or witness fails to provide available relevant evidence during the investigation, such evidence may, at the discretion of the Director of Student Conduct or designee, be excluded from consideration at the hearing. While parties are not restricted from presenting information attesting to the parties' character, such evidence generally is not considered relevant.

The investigators will provide to a party written notice of the date, time, location, participants, and purpose of all investigative interviews to which they are invited or expected, with sufficient time (generally no less than three (3) business days, absent exigent circumstances) for the party to prepare to participate.

Parties will be interviewed separately. The investigator will interview witnesses as necessary.

In general, a party's medical and counseling records are confidential. The investigators will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a

physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the investigators obtain that party's voluntary, written consent to do so.

The investigators will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client, doctor-patient), unless the individual holding such privilege has waived the privilege.

c. Case File

After each party has been interviewed and had the opportunity to identify witnesses and other potentially relevant information and evidence, and the investigators have completed any witness interviews and any gathering of evidence, the investigators will prepare a case file. The case file will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and any inculpatory or exculpatory evidence, whether obtained from a party or other source as part of the investigation. The case file may include, as applicable, transcripts or summaries of party and witness interviews and other collected documents and evidence. The investigators will provide the case file, redacted of personally identifiable information in accordance with privacy regulations, to each party and their adviser in electronic form or hard copy. In all cases, any information relied on in adjudicating the matter will be provided to the parties and their advisers. The investigators will also provide an updated Notice of the Allegations, as appropriate.

d. Investigative Report

Following their review of the parties' responses (if any) to the case file, the investigators will create a written investigative report that summarizes all relevant evidence. The investigator will not make a finding of responsibility.

Within ten (10) business days of receiving the investigative report, each party may respond in writing, which may include a request that the investigators collect additional evidence. If the investigators believe that further information is needed following receipt of any responses from the parties, the investigators will pursue any additional investigative steps as needed. The parties and their advisers will be provided with each party's written responses to the case file, if any, as well as any additional information collected by the investigators, in electronic format or hard copy.

At least ten (10) business days prior to the hearing, the investigative report will be provided to the parties and their advisers via electronic format.

The parties may choose to provide a written response to the investigative report, which must be submitted at least five (5) business days prior to the start of the hearing. At least 48 hours prior to

the hearing, the parties and their advisers will be provided with the other party's written response to the investigative report, if any, in electronic format.

3. Hearing

A panel of three individuals will make up the hearing panel and will hear every case. One of the individuals on the hearing panel will be the Director of Student Conduct or a designee and shall serve as the hearing officer and two of the individuals on the Hearing panel may be members of the University community or designees appointed by the hearing officer.

The hearing officer will have absolute discretion with respect to administering the hearing. The hearing officer will decide whether evidence and witnesses are relevant or irrelevant, with the understanding that the introduction of relevant evidence and witnesses will always be permitted. The hearing officer will be responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or adviser.

Prior to the hearing, the hearing panel will be provided with the case file, investigative report, and any responses to the investigative report. All members of the hearing panel shall review the case file (including the parties' responses), ask questions during the hearing as they deem appropriate, and participate in the deliberations leading to the adjudication of responsibility.

At least five (5) business days prior to the hearing, the parties and their advisers will be notified of the hearing date, time, and location (or relevant electronic information, if the hearing will be conducted remotely).

In advance of the hearing, parties will be required to identify witnesses to be called at the hearing, as well as to provide a brief written explanation of the information each witness would be asked to provide, such that the hearing officer can determine their relevance. The hearing officer has the discretion to exclude from the hearing evidence/witnesses/questions deemed irrelevant.

At the hearing officer's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisers to explain the hearing protocol.

a. Standard of Proof

The standard of proof under this regulation is preponderance of the evidence. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the relevant evidence and reasonable inferences from the evidence, that the respondent violated this regulation.

b. Expectation regarding the Complainant, the Respondent, and the Witnesses regarding the Hearing

In all proceedings under this regulation, including at the hearing, the complainant, the respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.

If the complainant, the respondent, or a witness informs the University that they will not attend the hearing (or will refuse to be cross-examined), the hearing may proceed, as determined by the Title IX Coordinator. The hearing panel may not, however: (a) rely on any statement or information provided by that non-participating individual in reaching a determination regarding responsibility; or (b) draw any adverse inference in reaching a determination regarding responsibility based solely on the individual's absence from the hearing (or their refusal to be cross-examined).

Each party may make requests related to the format or the nature of their participation in the hearing. The hearing officer will accommodate requests by either party for the hearing to occur with the parties located in separate locations with technology enabling the hearing panel and the parties to simultaneously see and hear the party answering questions. As appropriate and/or at the discretion of the hearing officer, hearings may be conducted in person or by video conference or any other means of communications by which all individuals participating are able to see and hear each other.

c. Case Presentation

While the hearing is not intended to be a repeat of the investigation, the parties will be provided with an equal opportunity for their advisers to conduct cross examination of the other party and/or of relevant witnesses. A typical hearing may include brief opening remarks by the hearing officer; questions posed by the hearing panel to one or both of the parties; questions posed by the hearing panel to any relevant witnesses; and cross-examination by either party's adviser of the other party and relevant witnesses.

The parties' advisers will have the opportunity to cross examine the other party (and witnesses, if any). Such cross examination must be conducted directly, orally, and in real time by the party's adviser and never by a party personally. Only relevant cross examination questions may be asked of a party or witness. Before a party or witness answers a cross-examination question that has been posed by a party's adviser, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Other University administrators may attend the hearing at the request of or with the prior approval of the hearing officer.

d. Record of Hearing

The University shall create an official record in the form of all written materials used in the hearing including the investigation report, attachments, etc.

e. Written Determination

Following the hearing, the hearing panel will consider all of the relevant evidence and deliberate regarding responsibility. The hearing panelist shall make a determination, by a preponderance of the evidence, whether the respondent has violated the regulation. The hearing panelist shall write a written determination, which will contain: (1) the allegations potentially constituting the Title IX Regulation violation; (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 (if any), methods used to gather other information, and the hearing); (3) findings of fact supporting the determination; (4) conclusions regarding the application of this regulation to the facts; (5) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a regulation violation occurred), any disciplinary sanctions imposed by the Director of Student Conduct or designee if there has been a finding of responsibility, and whether any remedies designed to restore or preserve equal access to the University's education program or activity or working environment will be implemented; and (6) relevant appeal information for the parties. Disciplinary sanctions and remedies will be determined in accordance with the procedures listed below, and the information will be provided to the Hearing panelist for inclusion in the written determination.

The parties and their advisers will simultaneously be provided with the written determination via electronic format.

4. Disciplinary Sanctions and Remedies (to be included in the Written Determination)

If a party is found to have violated this regulation, before finalizing the written determination, the hearing officer will refer the matter to the appropriate University official(s) to determine sanctions and remedies. Sanctions being imposed will be included in the written determination.

Sanctions will take into account the seriousness of the misconduct as compared to like cases in the past, the respondent's previous disciplinary history (if any), and institutional principles. Remedies, which may include supportive measures, will be designed to restore or preserve equal access to the University's education program or activity. Specifically, sanctions will be set by the following Director of Student Conduct or designee:

- If a **high school, undergraduate or graduate student** is found responsible for violating the regulation, the case record (consisting of the case file and responses, investigative report and responses, and written determination relating to the finding of responsibility) will be provided to the Director of Student Conduct or designee. The Director or Student Conduct or designee will determine sanctions and remedies in consultation with appropriate University administrators. Any sanctions and remedies will be included in the hearing panelist's written determination, and sanctions will be subject to appeal under this regulation.

XII. Appeal of Student Respondent Cases

Appeals under this regulation will be heard by the Dean of Students or designee.

Both parties have equal rights to an impartial appeal at the following junctures:

- A. Upon the dismissal of a formal complaint or any allegations therein.
- B. Upon receiving the hearing officer's written determination regarding responsibility and, when applicable, sanction and remedies.

Appeals may be submitted on the following bases: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made which could affect the outcome of the matter; and/or (3) the Title IX Coordinator or their staff, investigator(s), any member of the hearing panel or Director of Student Conduct or designee 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.

To appeal, a party must electronically submit a written appeal statement to the Dean of Students of the University within five (5) business days of receipt of the written determination or dismissal. The Dean of Students may deem a late submission reasonable only under extenuating circumstances, and may decide in their sole discretion what constitutes valid extenuating circumstances. The appeal shall consist of a written statement not to exceed 2500 words, outlining the basis for appeal and the relevant information to substantiate the appeal. The non-appealing party will be provided with a copy of the appealing party's written statement and may submit a written response, not to exceed 2500 words, to the Dean of Students within five (5) business days of receipt of the appealing party's written statement. The non-appealing party's statement will be provided to the appealing party. No further appeal submissions from the parties shall be permitted.

An appeal is limited in scope. The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of University rules has occurred.

In deciding an appeal, the Dean of Students may consider the case file and any responses, investigative report and any responses, the hearing record, the written determination, and any written appeal(s) or statements by the parties. The Dean of Students also may consider any other materials the University deems relevant and that have been shared with the parties.

The parties and their advisers will simultaneously be provided (via electronic format) with the written decision describing the result of the appeal and the rationale for the result.

- If the Dean of Students finds that the earlier decision should stand, the parties will be so informed and the Title IX process is concluded.
- If the Dean of Students finds that there was procedural irregularity that affected the outcome of the matter, the matter will be remanded to the Director of Student Conduct or designee to determine appropriate further action.

- If the Dean of Students finds that new evidence is available which was not reasonably available at the time of the determination regarding responsibility or dismissal, and such evidence could alter the outcome of the matter, the matter will be remanded to the hearing officer for appropriate further action.
- If the Dean of Students finds that the Title IX Coordinator or their staff, investigator(s), or member of the hearing panel, 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, the Dean of Students will take appropriate measures to address and remediate the impact of the bias or conflict consistent with the general procedures of this regulation.
- If the Dean of Students finds that the sanctions (or recommended sanctions) are not commensurate with the violation, the matter will be remanded to the Director of Student Conduct or designee for reconsideration.

The Dean of Students will seek to complete the appeal review within twenty (20) business days of receipt of the appealing party's written statement.

Unless further proceedings are necessary the determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of an appeal if an appeal is filed (at which point the Title IX Regulation grievance process is concluded), or if an appeal is not filed, the date on which an appeal would no longer be considered timely (at which point the Title IX Regulation grievance process is concluded).

XIII. Investigation and Adjudication of Faculty or Staff Respondent Cases

1. Timing

The University will seek to complete the investigation and adjudication within ninety (90) business days after the investigators' first interview of the complainant. Investigations will proceed according to the aforementioned timeframe during the summer and at other times when the University is not in session. Timeframes for all phases of the grievance process, including the investigation, the hearing, and any related appeal, apply equally to both parties.

There may be circumstances that require the extension of time frames for good cause. Time frames may be extended to ensure the integrity and completeness of the investigation or adjudication, comply with a request by external law enforcement, accommodate the absence of a party, adviser, or witness, or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The University will notify the parties in writing of any extension of the time frames for good cause, and the reason for the extension.

In accordance with University regulation, the University will review requests for language assistance and accommodation of disabilities throughout the investigation and adjudication process.

Although cooperation with law enforcement may require the University to temporarily suspend the fact-finding aspect of an investigation, under such circumstances, the University will promptly resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide supportive measures for the complainant or respondent. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this regulation has occurred.

2. Investigation

If the Title IX Coordinator has determined, following an initial assessment, that an investigation is appropriate, the Title IX Coordinator or a designee will act as the investigator.

a. Notice of Investigation

Following the receipt and review of the formal complaint by the Title IX Coordinator, and it being determined that the matter properly falls under this Title IX Regulation, the parties will be informed in writing of the initiation of the investigation. The written information shall include:

- The identities of the parties, if known.
- A concise summary of the alleged conduct at issue (including when and where it occurred, if known).
- Notice of the allegations potentially constituting Title IX Regulation violations.
- A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement informing the parties that they may have an adviser of their choice, who may be, but is not required to be, an attorney.
- A statement informing the parties that they may request to inspect and review evidence.
- A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process may constitute a violation of University regulation.
- Information regarding the applicable grievance procedures, including the informal resolution process.

If, during the investigation, additional information is disclosed that may also constitute prohibited conduct under this regulation, the respondent and complainant will be informed in writing that such additional information will be included in the grievance process.

b. Collection of Evidence

The investigators will collect information from each party. While the complainant and the respondent are not restricted from gathering and presenting relevant evidence, the investigators are responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given an equal opportunity to suggest witnesses; provide other relevant information, such as documents, communications, photographs, and other evidence; and suggest questions to be posed to the other party or witnesses. Parties and witnesses are expected to provide all available relevant evidence to the investigators during the investigation. If a party or witness fails to provide available relevant evidence during the investigation, such evidence may, at the discretion of the Director of Student Conduct or designee, be excluded from consideration at the hearing. While parties are not restricted from presenting information attesting to the parties' character, such evidence generally is not considered relevant.

The investigators will provide to a party written notice of the date, time, location, participants, and purpose of all investigative interviews to which they are invited or expected, with sufficient time (generally no less than three (3) business days, absent exigent circumstances) for the party to prepare to participate.

Parties will be interviewed separately. The investigator will interview witnesses as necessary.

In general, a party's medical and counseling records are confidential. The investigators will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the investigators obtain that party's voluntary, written consent to do so.

The investigators will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client, doctor-patient), unless the individual holding such privilege has waived the privilege.

c. Case File

After each party has been interviewed and had the opportunity to identify witnesses and other potentially relevant information and evidence, and the investigators have completed any witness interviews and any gathering of evidence, the investigators will prepare a case file. The case file will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and any inculpatory or exculpatory evidence, whether

obtained from a party or other source as part of the investigation. The case file may include, as applicable, transcripts or summaries of party and witness interviews and other collected documents and evidence. The investigators will provide the case file, redacted of personally identifiable information in accordance with privacy regulations, to each party and their adviser in electronic form or hard copy. In all cases, any information relied on in adjudicating the matter will be provided to the parties and their advisers. The investigators will also provide an updated Notice of the Allegations, as appropriate.

d. Investigative Report

Following their review of the parties' responses (if any) to the case file, the investigators will create a written investigative report that summarizes all relevant evidence. The investigator will not make a finding of responsibility.

Within ten (10) business days of receiving the investigative report, each party may respond in writing, which may include a request that the investigators collect additional evidence. If the investigators believe that further information is needed following receipt of any responses from the parties, the investigators will pursue any additional investigative steps as needed. The parties and their advisers will be provided with each party's written responses to the case file, if any, as well as any additional information collected by the investigators, in electronic format or hard copy.

At least ten (10) business days prior to the hearing, the investigative report will be provided to the parties and their advisers via electronic format.

The parties may choose to provide a written response to the investigative report, which must be submitted at least five (5) business days prior to the start of the hearing. At least 48 hours prior to the hearing, the parties and their advisers will be provided with the other party's written response to the investigative report, if any, in electronic format.

3. Hearing

A panel of three individuals will make up the hearing panel and will hear every case. One of the individuals on the hearing panel will be the Director of Human Resources, Vice Provost, or a designee and shall serve as the hearing officer and two of the individuals on the hearing panel may be members of the University community or designees appointed by the hearing officer.

The hearing officer will have absolute discretion with respect to administering the hearing. The hearing officer will decide whether evidence and witnesses are relevant or irrelevant, with the understanding that the introduction of relevant evidence and witnesses will always be permitted. The hearing officer will be responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or adviser.

Prior to the hearing, the hearing panel will be provided with the case file, investigative report, and any responses to the investigative report. All members of the hearing panel shall review the case

file (including the parties' responses), ask questions during the hearing as they deem appropriate, and participate in the deliberations leading to the adjudication of responsibility.

At least five (5) business days prior to the hearing, the parties and their advisers will be notified of the hearing date, time, and location (or relevant electronic information, if the hearing will be conducted remotely).

In advance of the hearing, parties will be required to identify witnesses to be called at the hearing, as well as to provide a brief written explanation of the information each witness would be asked to provide, such that the hearing officer can determine their relevance. The hearing officer has the discretion to exclude from the hearing evidence/witnesses/questions deemed irrelevant.

At the hearing officer's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisers to explain the hearing protocol.

a. Standard of Proof

The standard of proof under this regulation is preponderance of the evidence. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the relevant evidence and reasonable inferences from the evidence, that the respondent violated this regulation.

b. Expectation regarding the Complainant, the Respondent, and the Witnesses regarding the Hearing

In all proceedings under this regulation, including at the hearing, the complainant, the respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.

If the complainant, the respondent, or a witness informs the University that they will not attend the hearing (or will refuse to be cross-examined), the hearing may proceed, as determined by the Title IX Coordinator. The hearing panel may not, however: (a) rely on any statement or information provided by that non-participating individual in reaching a determination regarding responsibility; or (b) draw any adverse inference in reaching a determination regarding responsibility based solely on the individual's absence from the hearing (or their refusal to be cross-examined).

Each party may make requests related to the format or the nature of their participation in the hearing. The hearing officer will accommodate requests by either party for the hearing to occur with the parties located in separate locations with technology enabling the hearing panel and the parties to simultaneously see and hear the party answering questions. As appropriate and/or at the discretion of the hearing officer, hearings may be conducted in person or by video conference or any other means of communications by which all individuals participating are able to see and hear each other.

c. Case Presentation

While the hearing is not intended to be a repeat of the investigation, the parties will be provided with an equal opportunity for their advisers to conduct cross examination of the other party and/or of relevant witnesses. A typical hearing may include brief opening remarks by the hearing officer; questions posed by the hearing panel to one or both of the parties; questions posed by the hearing panel to any relevant witnesses; and cross-examination by either party's adviser of the other party and relevant witnesses.

The parties' advisers will have the opportunity to cross examine the other party (and witnesses, if any). Such cross examination must be conducted directly, orally, and in real time by the party's adviser and never by a party personally. Only relevant cross examination questions may be asked of a party or witness. Before a party or witness answers a cross-examination question that has been posed by a party's adviser, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Other University administrators may attend the hearing at the request of or with the prior approval of the hearing officer.

d. Record of Hearing

The University shall create an official record in the form of all written materials used in the hearing including the investigation report, attachments, etc.

e. Written Determination

Following the hearing, the hearing panel will consider all of the relevant evidence and deliberate regarding responsibility. The hearing panelist shall make a determination, by a preponderance of the evidence, whether the respondent has violated the regulation. The hearing panelist shall write a written determination, which will contain: (1) the allegations potentially constituting the Title IX Regulation violation; (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 (if any), methods used to gather other information, and the hearing); (3) findings of fact supporting the determination; (4) conclusions regarding the application of this regulation to the facts; (5) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a regulation violation occurred), any disciplinary sanctions imposed by the Director of Human Resources, Vice Provost or designee if there has been a finding of responsibility, and whether any remedies designed to restore or preserve equal access to the University's education program or activity or working environment will be implemented; and (6) relevant appeal information for the parties. Disciplinary sanctions and remedies will be determined in accordance with the procedures listed below, and the information will be provided to the Hearing panelist for inclusion in the written determination.

The parties and their advisers will simultaneously be provided with the written determination via electronic format.

4. Disciplinary Sanctions and Remedies (to be included in the Written Determination)

If a party is found to have violated this regulation, before finalizing the written determination, the hearing officer will refer the matter to the appropriate University official(s) to determine sanctions and remedies. Sanctions being imposed will be included in the written determination.

Sanctions will take into account the seriousness of the misconduct as compared to like cases in the past, the respondent's previous disciplinary history (if any), and institutional principles. Remedies, which may include supportive measures, will be designed to restore or preserve equal access to the University's education program or activity. Specifically, sanctions will be set by the following Director of Human Resources, Vice Provost or designee:

- If a **faculty member or other individual** is found responsible, the case record (consisting of the case file and responses, investigative report and responses, hearing recording, and written determination relating to the finding of responsibility) will be forwarded to the Provost or designee, who will determine sanctions and remedies in consultation with appropriate University administrators. Any sanctions (and/or recommendation of sanctions) and remedies will be included in the hearing panelist's written determination, and sanctions (and/or recommended sanctions) will be subject to appeal under this regulation.
- If a **staff member** is found responsible, the case record (consisting of the case file and responses, investigative report and responses, and written determination relating to the finding of responsibility) will be forwarded to the Director of Human Resources or designee, who will determine sanctions and remedies in consultation with appropriate University administrators. Any sanctions and remedies will be included in the hearing panelist's written determination, and sanctions will be subject to appeal under this regulation.

XIV. Appeal for Faculty or Staff Respondents

Appeals for faculty or staff will follow the applicable grievance process under Regulation 614, Regulation 615 for staff, or section 7.5 of the Faculty Handbook for faculty.

XV. Range of Sanctions under this Regulation

Members of the University community may be subject to disciplinary sanctions for violating this regulation.

Sanctions Applicable to Students

The sanctions for students are listed below.

1. **Disciplinary Probation.** A more serious admonition assigned for a definite amount of time. It implies that any future violation, of whatever kind, during that time, may be grounds for suspension, suspension with conditions, or in especially serious cases,

expulsion from the University. Disciplinary probation will be taken into account in judging the seriousness of any subsequent infraction even if the probationary period has expired. Disciplinary probation appears on a student's permanent record at the University (but not on the transcript) and may be disclosed by the Office of the Dean of Students in response to requests for which the student has given permission or as otherwise legally required.

2. **Withholding of Degree.** In cases involving seniors or graduate students in their final semester, the University may withhold a student's degree for a specified period of time. This sanction is imposed instead of suspension at the end of a student's senior year or final year of graduate study when all other degree requirements have been met. A withheld degree is recorded on a student's transcript. Relevant information remains on the student's permanent record at the University and may be disclosed by the Office of the Dean of Students in response to requests for which the student has given permission or as otherwise legally required.
3. **Suspension.** Removal from membership in the University for a specified period of time. A suspension is recorded on a student's transcript. Relevant information remains on the student's permanent record at the University and may be disclosed by the Office of the Dean of Students in response to requests for which the student has given permission or as otherwise legally required. A suspension may continue until certain conditions, stipulated by the appropriate body applying this sanction, have been fulfilled. These conditions may include, but are not limited to, restitution of damages, formal apology, or counseling. Relevant information remains on the student's permanent record at the University and may be disclosed by the Office of the Dean of Students or the Office response to requests for which the student has given permission or as otherwise legally required.
4. **Expulsion.** Permanent removal from membership in the University, without any opportunity for readmission to the community. Expulsion is recorded on a student's transcript. Relevant information remains on the student's permanent record at the University and may be disclosed by the Office of the Dean of Students in response to requests for which the student has given permission or as otherwise legally required. An expulsion precludes admission to any other institution within the University of North Carolina System University.

The following may accompany the preceding sanctions, as appropriate:

Campus Service. Campus service up to 10 hours per week may be added to a reprimand or disciplinary probation. This sanction may be particularly appropriate in cases involving vandalism, disorderly conduct, and alcohol-related infractions.

University Housing. When appropriate to the infraction, particularly in instances involving antisocial behavior having a serious impact on the residential community, removal from University housing or relocation within University housing may be added to any of the other sanctions listed

above, except warning and reprimand. Relocation within residential colleges will be imposed only after consultation with the head of the student's residential college.

Restriction of Access to Space, Resources, and Activities. When appropriate in cases involving behavioral misconduct between members of the community, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact among the parties.

Educational Refresher Programs. In addition to any of the sanctions listed above, a student may be required to participate in educational refresher programs appropriate to the infraction.

Restitution. The sanction for willful or reckless damage or vandalism will ordinarily include restitution for replacement or repair.

Sanctions Applicable to Faculty and Staff Members

For violations of this regulation by faculty or staff members, disciplinary sanctions may include (in accordance with the employment regulations governing the employee in question) counseling or training, written warning, financial penalty, unpaid leave of absence, suspension (or recommendation for suspension), demotion, termination (or recommendation for termination) in accordance with applicable regulations. The University may place a faculty or staff member on administrative leave during the pendency of a grievance process, provided that such action shall not modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Sanctions Applicable to Non-Members of the University Community

For violations of this regulation by non-members of the University community, including alumni, disciplinary sanctions may include being temporarily or permanently barred from the University or subject to other restrictions.

XVI. Informal Resolution Process

The informal resolution process is a voluntary, remedies-based process designed to provide members of the University community with an option to resolve certain disputes with other members of the University community in a forum that is separate and distinct from the University's formal grievance processes under the Title IX Regulation or the Prohibited Discrimination Regulation. Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent; the informal resolution process is not available in matters involving a student and an employee. The purpose of the informal resolution process is to eliminate the conduct which has been reported by the complainant (and prevent its recurrence), and place both individuals in a position to pursue their academic, working, and non-academic interests in a safe, respectful, and productive educational and working

environment. Under this process, there will be no disciplinary action taken against a respondent, and the resolution will not appear on the respondent's disciplinary record.

The following are features of the informal resolution process:

- Participation in the informal resolution process is completely voluntary.
 - No party will be required to participate in the informal resolution process and the University will not require, encourage, or discourage the parties from participating in the informal resolution process.
 - All parties must consent in writing to participation in the informal resolution process.
- The University may offer the informal resolution process only under the following circumstances:
 - The Title IX Coordinator has determined, through an initial assessment that the alleged conduct, if substantiated, would constitute a violation of the Title IX Regulation violation or Prohibited Discrimination Regulation.
 - The Title IX Coordinator has determined that the informal resolution process is appropriate for this matter.
- All parties will be provided with a written notice disclosing the allegations, the requirements of the informal resolution process, and any outcomes resulting from participating in the informal resolution process.
- At any time prior to signing an informal resolution agreement, any party has the right to withdraw from the informal resolution process and resume the formal grievance process.
- Under the informal resolution process, there will be no disciplinary action taken against a respondent, and the resolution will not appear on the respondent's disciplinary record. If a formal complaint is filed against the respondent in a subsequent matter under the Title IX Regulation or the Prohibited Discrimination Regulation, the respondent's participation in a prior informal resolution process will not be considered relevant and will not be taken into account in the resolution of the subsequent complaint.
- Parties may be accompanied by a member of the University community who will serve as a support person to any meeting related to the informal resolution process. However, the University support person may not actively participate in meetings and may not serve as a proxy for the party. Any individual who serves as a University support person is expected to make themselves available for meetings as scheduled by the University. The University (including any official acting on behalf of the University) has the right at all times to determine what constitutes appropriate behavior on the part of a University support person and to take appropriate steps to ensure compliance with this regulation.

- Any agreements reached as part of the informal resolution process must be approved by the Title IX Coordinator in order to ensure consistency with the University's federal obligations. If the Title IX Coordinator determines at any time prior to the signing of the informal resolution agreement that the informal resolution process is no longer appropriate, the Title IX Coordinator may terminate the process.
- Upon signing the informal resolution agreement, the parties are bound by its terms and cannot opt for a formal grievance process based on the conduct alleged in the formal complaint.
- Failure to comply with the signed agreement may result in disciplinary action for either party.
- If the parties' circumstances change significantly, they may request a supplemental agreement; the Title IX Coordinator will determine whether it is appropriate to proceed. For example, if both parties joined the same eating club subsequent to signing the agreement or participated in the same study abroad program, either party could request a supplemental agreement to address the changed circumstances, provided that both parties agreed to any such revisions. Under such circumstances, the above conditions would apply.

Initiation of the Informal Resolution Process

If the complainant files a formal complaint and requests to engage in the informal resolution process, the Title IX Coordinator will consider whether the informal resolution process is appropriate in the particular matter. In making this determination, the Title IX Coordinator will consider the following factors:

- The disciplinary record (or past conduct) of the respondent relating to sexual misconduct, physical violence, failure to comply with a no contact directive, and/or other relevant conduct;
- The nature of the alleged conduct, whether allegations involve multiple victims and/or a pattern of conduct, or other evidence-informed factors indicative of increased risk to campus safety;
- Whether the circumstances warrant the Title IX Coordinator filing a formal complaint (e.g., if there is sufficient evidence to proceed with an investigation/adjudication even absent participation by the complainant);
- Whether proceeding with the informal resolution process is in accordance with the principles and objectives of the Title IX Regulation and Prohibited Discrimination Regulation, as determined by the Title IX Coordinator; and/or
- Whether proceeding with the informal resolution process in matters involving faculty and staff members is in accordance with University employment practices.

If the Title IX Coordinator determines that a case is not appropriate for the informal resolution process, the Title IX Coordinator will inform the complainant that the informal resolution process is unavailable.

If the formal grievance process has already begun, either party may seek to initiate the informal resolution process up until five business days prior to the hearing. If both parties agree to participate in the informal resolution process and the Title IX Coordinator approves of the informal resolution process, the formal grievance process will be adjourned while the informal resolution process is pending; if an agreement is not reached, the formal grievance process will be resumed.

Upon initiation of the informal resolution process, the Title IX Coordinator will refer the matter to a trained informal resolution facilitator. The facilitator will consult (separately) with each party in an effort to reach a resolution that best meets the interests and needs of the parties. Unless they mutually choose to do so as part of an agreement, the parties will not meet together in person as part of the process.

Potential Outcomes of the Informal Resolution Process

Depending on the nature and circumstances of the particular situation, parties may agree to outcomes such as:

- Long-term extension of a mutual no contact directive;
- Imposition of a “skewed” no contact directive placing the burden on the respondent to limit the respondent’s physical proximity to the complainant;
- Restrictions on the respondent from participation in particular organizations or events;
- Changes to on-campus housing, subject to availability;
- Participation by the respondent in the University-provided educational resources to assist individuals in exploring harmful attitudes and behaviors, with an aim to empower individuals to actively contribute to a healthier and safer campus community.
- Participation by the respondent in the University-provided alcohol education program designed to reduce the harmful problems associated with alcohol misuse;
- Provision to the respondent of an “impact statement” written by the complainant (describing the impact(s) that the respondent’s conduct had on the complainant);
- Conversation between the parties facilitated by a trained individual appointed by the Title IX Coordinator;
- Other measures deemed appropriate by the Title IX Coordinator.

Failure to Comply with the Informal Resolution Agreement

Failure to comply with the signed agreement may result in disciplinary action for either party, consistent with disciplinary procedures.

Records Relating to the Informal Resolution Process

The records relating to the informal resolution process will be maintained.

Prior to participating in the informal resolution process, parties will be notified in writing that any information gathered in the informal resolution process may be used in the Title IX Regulation or Prohibited Discrimination Regulation formal grievance processes described in if the informal resolution process ends prior to a written agreement being signed by the parties. However, the University will not draw any adverse inference based on a respondent's participation in the informal resolution process, nor will such participation be considered an admission by the respondent.

Even if the parties enter into a written informal resolution agreement, if information related to the violation of other University regulations (i.e., regulations other than the Title IX Regulation or Prohibited Discrimination Regulation) comes to light through the informal resolution process, such information may be used in other University disciplinary processes, subject to the amnesty regulation.

Retaliation

The protections against Retaliation described above apply to individuals participating in the informal resolution process. Disciplinary consequences may result for those found responsible for Retaliation.

Time Frame for the Informal Resolution Process

The time frame for completion of the informal resolution process may vary, but the University will seek to complete the informal resolution process within thirty (60) business days of completion of the initial assessment. Should the time period extend beyond this time frame, the parties will be notified.

XVII. Training

The University will provide appropriate training to University officials with responsibilities under this regulation, including the Title IX Coordinator, Investigators, Hearing Panel Members, Appeal Panel Members, and any individual who facilitates the adjudication of the formal or the informal resolution process. Such training will cover the definition of Title IX Sexual Harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes under this regulation, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The University will ensure that Hearing Panel members receive training on any technology to be used at a hearing and on issues of relevance of questions and evidence, including questions and evidence about the irrelevancy of complainant's sexual predisposition or prior sexual behavior.

The University will ensure that investigators receive training on issues of relevance in order to create an investigative report that fairly summarizes relevant evidence. These training materials are publicly available on the University's Title IX website and will be made available for in-person review upon request. In addition, University officials with responsibilities under this regulation will receive training related to intersectionality.

XVIII. Record Retention

The University will maintain for a period of seven years records of the following:

- Each Title IX Regulation grievance process conducted under this regulation, including any determination regarding responsibility, any disciplinary sanction imposed on the respondent, and remedies provided to the complainant designed to restore or preserve access to the University's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, hearing panel members, other administrators or designees making determinations of responsibility, sanction or appeal, and any individual who facilitates the informal resolution process with regard to the Title IX Regulation.
- Records of any actions, including any supportive measures, taken in response to a report or formal complaint of the Title IX Regulation. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's educational and working program or activity. If the University does not provide a complainant with supportive measures, then the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

XIX. Modification and Review of Regulation

The University reserves the right to modify this regulation to take into account applicable legal requirements or extraordinary circumstances.

At regular intervals, the University will review this regulation to determine whether modifications should be made.