

Policies, Regulations & Rules

POL 04.25.07 – Title IX Sexual Harassment Policy

Authority: Board of Trustees

History: First Issued: July 15, 2020. Last Revised: July 15, 2020, with an Effective Date of August 14, 2020.

Related Policies:

NCSU POL11.35.01 – Code of Student Conduct

NCSU REG11.35.02 – Student Discipline Procedures

NCSU POL 04.25.05 – Equal Opportunity, Non-Discrimination and Affirmative Action Policy.

NCSU REG 04.25.08 – Title IX Sexual Harassment Resolution Procedure

NCSU REG 04.25.02 – Discrimination, Harassment and Retaliation Complaint Procedure

UNC System SHRA Employee Grievance Policy.

NCSU REG04.25.06 – Equal Opportunity, Title IX and Non-Discrimination Training for Employees

Contact: Vice Provost for Institutional Equity and Diversity [\(919\) 515-4559](tel:919-515-4559)

1. INTRODUCTION

North Carolina State University (NC State) is committed to providing a learning and working environment free from discrimination and harassment and one that is safe and inclusive for all members of the campus community. Title IX of the Education Amendments of 1972 (“Title

IX”) prohibits sex discrimination in university programs and activities, including but not limited to student recruitment, admissions, financial aid, program offerings, athletics, and all aspects of employment. The federal regulations related to Title IX (34 U.S.C. § 106 *et seq.*) address sexual harassment as a form of sex discrimination in education programs or activities and require universities to comply with specific rules regarding the handling of allegations of sexual harassment as defined by federal regulations related to Title IX.

This policy defines prohibited conduct under Title IX and outlines general provisions the university will follow with respect to handling allegations of sexual harassment in order to comply with Title IX. Specific procedures relating to Title IX complaint processes are contained in a companion regulation available at **NCSU REG 04.25.08 – Title IX Sexual Harassment Resolution Procedure**.

2. COVERAGE

This policy and its companion regulation address NC State’s obligations for responding to complaints of Title IX Sexual Harassment and Retaliation pursuant to Department of Education regulations implementing requirements to prohibit Title IX Sexual Harassment.

Title IX applies to persons in the United States in an institution’s education programs or activities (including employment). This Title IX Sexual Harassment Policy applies when: (1) NC State has Actual Knowledge of Sexual Harassment; (2) the Sexual Harassment occurred within NC State’s Education Programs or Activities; and (3) the Sexual Harassment is against a person in the United States.

Allegations of misconduct that do not meet the definition of Title IX Sexual Harassment or Retaliation under this policy may be subject to other university policies including but not limited to the Code of Student Conduct (**NCSU POL 11.35.01**) or the Equal Opportunity, Non-Discrimination and Affirmative Action Policy (**NCSU POL 04.25.05**). Members of the NC State community having questions about whether alleged misconduct falls under this or other policies, should contact the Equal Opportunity and Equity Unit of the Office of Institutional Equity and Diversity (OIED).

3. DEFINITIONS

For purposes of this policy, the following definitions shall apply:

- a) "Actual Knowledge" means notice of allegations of Title IX Sexual Harassment, or Retaliation to NC State's Title IX Coordinator or one of NC State's Title IX Designated Officials.
- b) "Complainant" means a person to whom the alleged Title IX Sexual Harassment was directed. At the time of filing a Formal Complaint, a Complainant must be participating in, or attempting to participate in, an NC State Education Program or Activity.
- c) "Education Program or Activity" includes locations, events, or circumstances over which NC State exercises substantial control over both the Respondent and the context in which the Title IX Sexual Harassment occurs (including employment), and also includes any building owned or controlled by a student organization that is officially recognized by NC State.
- d) "Formal Complaint" means a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that the university investigate the allegation of Title IX Sexual Harassment.
- e) "NC State's Title IX Designated Officials" are personnel authorized by NC State to receive notice of Title IX Sexual Harassment and Retaliation and to institute corrective measures.
- f) "Report" is a disclosure of information by any person to the Title IX Coordinator or an NC State Title IX Designated Official that includes allegations that may be covered by this policy.
- g) "Respondent" means a person who has been reported to have engaged in conduct that could constitute Title IX Sexual Harassment.
- h) "Retaliation" is intimidating, threatening, coercing, or discriminating against any person for the purpose of interfering with any right or privilege secured by Title IX or this policy because the person made a report or complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this policy or the companion regulations.
- i) "Supportive Measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the Education Program or Activity without unreasonably burdening the other party and include measures designed to protect the safety of all parties or the educational environment or to deter Sexual Harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort

services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The university shall maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of NC State to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

j) "Title IX Sexual Harassment" for purposes of Title IX and this policy means conduct on the basis of sex that satisfies one or more of the following:

1. A university employee conditioning the provision of an aid, benefit, or service on another employee's or student's participation in unwelcome sexual conduct ("quid pro quo" harassment by an employee);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an Education Program or Activity at NC State; or
3. Sexual assault as defined in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act," specifically 20 U.S.C. 1092(f)(6)(A)(v)), dating violence as defined in Violence Against Women Act ("VAWA," specifically 34 U.S.C. 12291(a)(10)), domestic violence as defined in VAWA (34 U.S.C. 12291(a)(8)), stalking as defined in VAWA (34 U.S.C. 12291(a)(30)) (for ease of reference the definitions as they appear in those laws are provided below), or other sexual misconduct defined below.

(A) Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation including:

(i) Rape, defined as the carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;

(ii) Sodomy, defined as oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;

(iii) Sexual Assault With An Object, defined as the use of 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 person, including instances where the person is incapable of giving

consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;

(iv) Fondling, defined as the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the person, including instances where the victim is incapable of giving consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;

(v) Incest, defined as nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;

(vi) Statutory Rape, defined as nonforcible sexual intercourse with a person who is under the statutory age of consent.

(B) Dating violence means violence committed by a person—

(i) who is or has been in a social relationship of a romantic or intimate nature with the victim;
and

(ii) where the existence of such a relationship shall be determined based on the consideration of the following factors:

a) The length of the relationship;

b) The type of relationship;

(C) Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitation with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family laws of the jurisdiction;

(D) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

(i) fear for their own safety or the safety of others; or

(ii) suffer substantial emotional distress.

4. PROHIBITED CONDUCT

NC State prohibits all forms of Sexual Harassment and will promptly and equitably address allegations of Title IX Sexual Harassment when the harassment occurs in the university's Education Programs or Activities in the United States.

NC State also prohibits Retaliation under this policy.

5. REPORTING TITLE IX SEXUAL HARASSMENT AND FILING A FORMAL COMPLAINT

Any person may report Title IX Sexual Harassment (whether or not the person reporting is the person impacted by the alleged conduct), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

Complainants may also file Formal Complaints with the Title IX Coordinator at any time. The procedure to be followed for filing Reports and Formal Complaints is contained in (**NCSU REG 04.25.08** – Title IX Sexual Harassment Resolution Procedure).

6. RESPONSE TO ALLEGATIONS OF TITLE IX SEXUAL HARASSMENT

6.1 Upon receiving a Report containing allegations of Title IX Sexual Harassment, the Title IX Coordinator will:

- a. promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, and explain the Title IX complaint resolution process, including the option for filing a Formal Complaint; and
- b. treat Complainants and Respondents equitably with respect to supportive measures.

6.2 If a Formal Complaint is filed, NC State will provide for a fair and equitable complaint resolution process designed to provide equal access to NC State's Education Programs and Activities.

6.3 Supportive measures will be made available to affected persons with or without the filing of a Formal Complaint.

7. RELATIONSHIP TO OTHER LAWS AND POLICIES

7.1 Nothing in this policy is intended to (1) restrict any rights that would otherwise be protected from government action by the First Amendment of the United States Constitution; or (2) deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution; or restrict any other rights guaranteed against government action by the United States Constitution.

7.2 Reports of discrimination or harassment on the basis of sex or of a sexual nature that do not meet the definition of Title IX Sexual Harassment in this policy may be prohibited by other policies, including but not limited to, the Equal Opportunity, Non-Discrimination and Affirmative Action Policy (**NCSU POL 04.25.05**).

7.3 Nothing in this policy may be read in derogation of any person's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq* or any regulations promulgated thereunder.

Audience: Faculty, Staff, and Students.

Category: Non-Discrimination.

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NC STATE UNIVERSITY

NORTH CAROLINA STATE UNIVERSITY

RALEIGH, NC 27695

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