

# Title IX Compliance and Resolution Regulation

Version 2 (Current Version)

 Print

<b>Policy</b>	REG05.25.03
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<b>Sub-category</b>	Non-Discrimination
<b>Authority</b>	Chancellor
<b>History</b>	Approved by Chancellor August 13, 2020; reviewed July 2022, no changes needed.
<b>Contact</b>	Office for Equity and Diversity: <a href="tel:252-328-6804">252-328-6804</a> ; <a href="mailto:oed@ecu.edu">oed@ecu.edu</a>
<b>Related Policies</b>	<p>POL 05.25.02, Notice of Nondiscrimination and Affirmative Action Policy (<a href="https://www.ecu.edu/prr/05/25/02">https://www.ecu.edu/prr/05/25/02</a>)</p> <p>REG11.30.01, Student Conduct Process (<a href="https://www.ecu.edu/prr/11/30/01">https://www.ecu.edu/prr/11/30/01</a>)</p> <p>Faculty Manual Part XII, Section II (<a href="https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part12section2.pdf">https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part12section2.pdf</a>)</p> <p>Faculty Manual Part IX, Section I (<a href="https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part9.pdf">https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part9.pdf</a>)<a href="https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part12section1.pdf">https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part12section1.pdf</a>)</p> <p>REG06.35.02, Mediation and Grievance Procedure for SHRA Employees (<a href="https://www.ecu.edu/prr/06/35/02">https://www.ecu.edu/prr/06/35/02</a>)</p> <p>REG06.35.03 Resolving Allegations of Discrimination - Interim (<a href="https://www.ecu.edu/prr/06/35/03">https://www.ecu.edu/prr/06/35/03</a>)</p> <p>REG06.35.01, Review Process and Procedure for EHRA Non-Faculty Employees (<a href="https://www.ecu.edu/prr/06/35/01">https://www.ecu.edu/prr/06/35/01</a>)</p> <p>Clinical Support Services Employee Handbook, Section 20 (for CSS) (<a href="https://humanresources.ecu.edu/wp-content/uploads/sites/21/2019/09/CSS_Employee_Handbook.pdf">https://humanresources.ecu.edu/wp-content/uploads/sites/21/2019/09/CSS_Employee_Handbook.pdf</a>)</p> <p>Minors on Campus Regulation (<a href="https://www.ecu.edu/prr/01/15/13">https://www.ecu.edu/prr/01/15/13</a>)</p> <p>Freedom of Expression Regulation (<a href="https://www.ecu.edu/prr/07/30/06">https://www.ecu.edu/prr/07/30/06</a>)</p> <p>University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct (<a href="https://www.ecu.edu/prr/05/25/04">https://www.ecu.edu/prr/05/25/04</a>)</p>

**Additional  
References**

Resource and Reporting Guide for Students Reporting Incidents of Title IX Conduct and Related Misconduct (A-1) (pdf) (<https://cdn.ecu.edu/docs/prr-uploaded-docs/R&R%20Guide%20for%20Student%20Complainant.pdf>)

Resource and Reporting Guide for Students Accused of Incidents of Title IX Conduct and Related Misconduct (A-2) (pdf) (<https://cdn.ecu.edu/docs/prr-uploaded-docs/Resource%20Guide%20for%20Students%20Accused%20of%20Title%20IX%20Conduct%20or%20Related%20Misconduct.pdf>)

Resource and Reporting Guide for Employees Reporting Incidents of Title IX Conduct and Related Misconduct (B-1) (pdf) (<https://cdn.ecu.edu/docs/prr-uploaded-docs/R&R%20Guide%20for%20Employee%20Complainant.pdf>)

Resource and Reporting Guide for Employees Accused of Incidents of Title IX Conduct and Related Misconduct (B-2) (pdf) (<https://cdn.ecu.edu/docs/prr-uploaded-docs/Resource%20Guide%20for%20Employee%20Respondents.pdf>)

Jeanne Clery Act (20 US Code § 1092(f)) (pdf) (<https://www.govinfo.gov/content/pkg/FR-2014-10-20/pdf/2014-24284.pdf#page=33>)

ECU Police Department (<https://police.ecu.edu/>)

Domestic Violence, NC General Statute §50B-1 (pdf) ([https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_50B/GS\\_50B-1.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_50B/GS_50B-1.pdf))

Stalking, NC General Statute §14-277.3A (pdf) ([https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter\\_14/gs\\_14-277.3a.html](https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_14/gs_14-277.3a.html))

Article 7B - Rape and Other Sex Offenses, §14-27.20 through §14-27.36 (pdf) ([https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_14/Article\\_7B.pdf](https://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_14/Article_7B.pdf))

ECU CARES (<https://ecucares.ecu.edu/>)

Report Disciplinary Complaint Against Student, OSRR (<https://cm.maxient.com/reportingform.php?EastCarolinaUniv>)

OSHR Employee Grievance Policy, Section 7 (pdf) ([https://files.nc.gov/ncoshr/documents/files/Employee\\_Grievance\\_Policy-Agency\\_1.pdf](https://files.nc.gov/ncoshr/documents/files/Employee_Grievance_Policy-Agency_1.pdf))

ECU Title IX Resources (<https://titleix.ecu.edu/resources/>)

Title IX OCR provisions (<https://www2.ed.gov/policy/rights/guid/ocr/sex.html>)

Text of Title IX ([https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html))

U.S. Department of Education Office for Civil Rights (<https://www2.ed.gov/about/offices/list/ocr/index.html>)

Student Organization Registration Tiers (pdf) (<https://engage.ecu.edu/organization/student-activities-and-organizations/documents/view/1774015>)

**1. Introduction.** East Carolina University, a constituent institution of the University of North Carolina, strives to be a national model for student success, public service and regional transformation, and is built upon tolerance, civility, and mutual respect. Consistent with these values, the University is committed to providing a safe and non-discriminatory learning, living and working environment for all members of the University community. The University prohibits unlawful discrimination on the basis of sex in any of its education or employment programs and activities. Specifically, this Regulation prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 ("Title IX"). Such behavior also requires the University to fulfill certain obligations under the Violence Against Women Reauthorization Act of 2013 ("VAWA") and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act").

1.1. Title IX Conduct. Pursuant to this Regulation, the University prohibits Sexual Assault (hereafter defined as Rape, Sodomy, Sexual Assault with an Object, Incest, Fondling, and Statutory Rape) Dating and Domestic Violence, Stalking, and Sexual Harassment ("Title IX Conduct"). These forms of Title IX Conduct may be unlawful, undermine the character and purpose of the University, and will not be tolerated.

1.2. Purpose. The University adopts this Regulation with a commitment to: (1) eliminating, preventing, and addressing the effects of Title IX Conduct; (2) fostering the University's community of trust, in which Title IX Conduct is not tolerated; (3) cultivating a climate where all individuals are well-informed and supported in reporting Title IX Conduct; (4) providing a fair and impartial process for all parties; and (5) identifying the standards by which violations of this Regulation will be evaluated and disciplinary action may be imposed. Employees or Students who violate this Regulation may face disciplinary action up to and including termination or expulsion. The University will take prompt and equitable action to eliminate Title IX Conduct, prevent its recurrence, and remedy its effects. The University conducts ongoing prevention, awareness, and training programs for Employees and Students to facilitate the goals of this Regulation. Every member of the University community should foster an environment free of Title IX Conduct. All members of the University community are encouraged to take reasonable and prudent actions to prevent or stop an act of Title IX Conduct. The University will support and assist community members who take such actions.

1.3. Application. This Regulation applies to all reports of Title IX Conduct occurring on or after the effective date of this Regulation. Where the date of the Title IX Conduct precedes the effective date of this Regulation, the definitions of misconduct in existence at the time of the alleged incident(s) will be used. The procedures under this Regulation, however, will be used to investigate and resolve all reports made on or after the effective date of this Regulation, regardless of when the incident(s) occurred.

2. **Definitions.** Title IX Conduct includes the following specifically defined forms of behavior: Sexual Assault (Rape, Incest, Forcible Fondling, and Statutory Rape), Dating and Domestic Violence, Stalking, and Sexual Harassment.

2.1. Complainant is defined as an individual who is alleged to be the victim of conduct that could constitute a policy violation under this Regulation. Any individual may report alleged conduct however the Complainant or the Title IX Coordinator must sign off on any formal complaint. A parent or legal guardian of minors enrolled in the ECU Community School may file a formal complaint on behalf of a child.

2.2. Respondent is defined as an individual who has been reported to be the perpetrator of conduct that could constitute a policy violation under this Regulation.

2.3. Sexual Assault is an offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting system of the Federal Bureau of Investigation including:

2.3.1. Rape, which is 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.

2.3.2. Sodomy, which is 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.

2.3.3. Sexual Assault with an Object, which is defined as the use of an object 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 mental or physical incapacity.

2.3.4. Incest, which is defined as nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

2.3.5. Fondling, which is defined as 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 his/her youth or because of age or because of his/her temporary or permanent mental incapacity.

2.3.6. Statutory Rape, which is defined as sexual intercourse with a person who is under the statutory age of consent.

2.4. Consent is:

2.4.1. Informed (knowing),

2.4.2. Voluntary (freely given), and

2.4.3. Active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed- upon sexual activity.

2.4.4. Consent is explicit approval and permission to engage in sexual activity demonstrated by clear actions, words, or writing(s). Consent is informed, freely given, continuing, and mutually understood by all parties involved. If coercion, intimidation, threats, and/or physical force are used to obtain participation or continuing participation, then consent is not present. If the Complainant was mentally or physically incapacitated or impaired so that the Complainant could not understand the fact, nature, and/or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption, or being asleep or unconscious, or under the age of legal consent, or unable to give consent under current law. If a person becomes incapacitated after consent is given, but before the sexual act is initiated or completed, then consent is no longer valid. Silence does not necessarily constitute consent, and past consent of sexual activities does not imply ongoing future consent. Whether the Respondent has taken advantage of a position of influence over the Complainant may be a factor in determining whether consent was freely given. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Consent can be withdrawn at any time by either party.

2.4.4.1. Force includes (1) the use of physical violence, (2) threats, (3) intimidation, and/or (4) coercion. Consent cannot be obtained by Force.

2.4.4.1.1. Physical violence means exerting physical control over another person. Examples of physical force include but are not limited to hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.

2.4.4.1.2. Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples of threats include, but are not limited to, verbal statements reflecting intent to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.

2.4.4.1.3. Intimidation is an implied threat that causes reasonable fear in another person. Examples of intimidation include, but are not limited to: destroying property, brandishing a weapon, blocking an exit to cause fear. A person's physical size, alone, may not constitute intimidation; however if the person's size is used in a method to instill fear, it may constitute intimidation.

2.4.4.1.4. Coercion 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 activity. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of sexual activity, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued unreasonable pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

2.4.4.2. Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. A person who is incapacitated is unable, temporarily or permanently, to give Consent because of mental or physical helplessness, temporary or permanent physical or mental health condition, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs. However, the consumption of alcohol and/or drugs does not automatically mean that a person is incapacitated. Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

2.4.5. University Guidance on Consent and Assessing Incapacitation: A person who wants to engage in a specific sexual activity is responsible for obtaining Consent for that activity. Lack of protest does not constitute Consent. Lack of resistance does not constitute Consent. Silence and/or passivity also do not constitute Consent. Relying solely on non-verbal communication before or during sexual activity may lead to misunderstanding and result in a violation of this Regulation.

It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants are encouraged to discuss with one another before engaging in sexual activity. If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue sexual activity.

Consent to one form of sexual activity does not, by itself, constitute Consent to another form of sexual activity. For example, one should not presume that Consent to oral-genital contact constitutes Consent to vaginal or anal penetration. Consent to sexual activity on a prior occasion does not, by itself, constitute Consent to future sexual activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of Consent.

Consent may be withdrawn at any time. An individual who seeks to withdraw Consent must communicate, through clear words or actions, a decision to cease the sexual activity and/or withdraw Consent. However, Consent is automatically withdrawn once an individual becomes incapacitated, if the person seeking to engage in sexual activity knew or should have known that the other person became incapacitated. Once Consent is withdrawn, the sexual activity must cease immediately. In evaluating Consent in cases of alleged incapacitation, the University asks two questions: (1) Did the person initiating sexual activity know that the other party was incapacitated? and if not, (2) Should a sober, reasonable person in the same situation have known that the other party was incapacitated? If the answer to either of these questions is "YES," Consent was absent and the conduct is a violation of this regulation.

Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person.

One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know whom you are with?"

One should be cautious before engaging in sexual activity when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs creates ambiguity for either party as to whether Consent has been sought or given. If one has doubt about either party's level of intoxication, the safe thing to do is to forego all sexual activity.

Being impaired by alcohol or other drugs is no defense to any violation of this Regulation.

## 2.5. Dating and Domestic Violence.

2.5.1. Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the party's statements and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence 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. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

2.5.1.1. A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

2.5.2. Domestic Violence is defined as a felony or misdemeanor crime of violence committed:

2.5.2.1. By a current or former spouse or intimate partner of the victim;

2.5.2.2. By a person with whom the victim shares a child in common;

2.5.2.3. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

2.5.2.4. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;

2.5.2.5. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

2.6. Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to: fear for the person's safety or the safety of others; or suffer substantial emotional distress.

2.6.1. Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

2.6.2. Reasonable person is defined as a reasonable person under similar circumstances with similar identities to the victim.

2.6.3. Substantial emotional distress is defined as significant mental anguish that may, but does not necessarily require medical or other professional treatment or counseling.

2.7. Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

2.7.1. An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

2.7.2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or

2.7.3. Sexual assault, Dating violence, Domestic violence, or Stalking, as defined by this Regulation.

### **3. Title IX Jurisdiction.**

3.1. In compliance with the "Final Rule" released by the Department of Education on May 6, 2020, jurisdiction for the purposes of filing a complaint under Title IX of the Education Amendments of 1972 is as follows:

3.1.1. The allegation of misconduct must be made against an individual present within the United States;

3.1.2. The allegation of misconduct must occur within the University's education program or activity including locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the allegation occurs. This includes any building owned or controlled by a student organization recognized by the University.

3.1.3. The allegation seeks redress alleged misconduct in the form of sexual harassment, sexual assault, dating violence, domestic violence or stalking as defined by this Regulation.

3.2. Mandatory Dismissal.

3.2.1. Pursuant to applicable the Title IX "Final Rule", the University must dismiss allegations, contained in a Formal Complaint if the elements listed in Section 3.1 are not present.

3.2.2. Nonetheless, in effort to promote equity and consistency in the University's response to incidents resulting in allegations of misconduct, a dismissal under this Regulation does not preclude action under another provision of University policy. Therefore, a Complainant maybe able to seek resolution of an alleged incident even if the misconduct is not within the jurisdiction of this Regulation. See 34 C.F.R. 106.45(b)(2)(B). In such cases, complaints made by an ECU community member that do not satisfy the requirements of Section 3, may be referred for handling under University Regulation Prohibited Interpersonal Violence and Related Misconduct.

3.3. Discretionary Dismissal.

3.3.1. The University may dismiss a Formal Complaint or any allegations therein, if at any time during the Formal Investigation or Hearing:

3.3.1.1. The Complainant notifies the Title IX Coordinator or designee in writing that they desire to withdraw the Formal Complaint or any allegations therein;

3.3.1.2. The Respondent is no longer enrolled or employed by the University;

3.3.1.3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

3.4. Notice of Dismissal.

3.4.1. Upon either a mandatory or discretionary dismissal, the University will notify both the Complainant and Respondent in writing of the dismissal and the reasoning for the dismissal.

3.5. Conflicting Provisions: This Regulation supersedes any conflicting provisions contained in previous regulations, including but not limited to the "Interim Regulation on Responding to Complaints of Sexual Harassment, Sexual Misconduct and/or Discrimination on the Basis of Sex", the "Sexual Harassment, Discrimination and Conflicts of Interest Policies and Procedures of East Carolina University", "Regulation Addressing Sexual Assault, Domestic and Dating Violence and Stalking as required by the Violence Against Women Act Amendments to the Clery Act - Interim", the "Regulation on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence" and the "University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct." Where Title IX Conduct violates this Regulation and also violates another Regulation, the University's response will be governed by the procedures referenced in this Regulation. Questions about which Regulation applies in a specific instance should be directed to the University's Title IX Coordinator at (252) 328-6804. Note that the University's office for Equity and Diversity administers a separate regulation that addresses other forms of discrimination and harassment: "Resolving Allegations of Discrimination."

### **4. Applicable Procedures.**

4.1. The specific procedures for reporting, investigating, and resolving Title IX Conduct are based upon the nature of the Respondent's relationship to the University (Student, ECU Community School Student, Employee, or Third Party). Each set of procedures referenced below is guided by the same principles of fairness and respect for Complainants and Respondents.

4.2. Disciplinary Action. A Student or Employee determined by the University to have committed an act of Title IX Conduct is subject to disciplinary action, up to and including expulsion and separation from the University. Third Parties who commit Title IX Conduct may have their relationships with the University terminated and/or their privileges of being on University premises withdrawn.

4.3. Procedures. The procedures referenced below and/or included in the accompanying appendices provide for prompt and equitable response to reports of Title IX Conduct. The procedures designate specific timeframes for major stages of the process and provide for thorough and impartial investigations that afford all parties notice and an opportunity to present witnesses and evidence, to view the information that will be used in determining whether a Regulation violation has occurred, and an opportunity to pose questions to be answered by parties and other witnesses. The University applies the Preponderance of the Evidence standard when determining whether this Regulation has been violated. Meeting the preponderance of evidence standard constitutes a conclusion it is more likely than not that the alleged conduct occurred. This standard will be used to evaluate the evidence for purposes of making findings and drawing conclusions for an investigation conducted under this regulation.

4.3.1. Where the Respondent is a Student. The procedures for responding to reports of Title IX Conduct committed by Students are detailed in Appendix A: Investigating and Resolving Reports Under the Title IX Compliance and Resolution Regulation and the University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct ([//cdn.ecu.edu/docs/prr-uploaded-docs/Appendix A revised 9.15.2021.pdf](http://cdn.ecu.edu/docs/prr-uploaded-docs/Appendix A revised 9.15.2021.pdf)).

4.3.2. Where the Respondent is an Employee. The procedures for responding to reports of Title IX Conduct committed by Employees, including faculty, are detailed in Appendix B: Investigating and Resolving Reports Under the Title IX Compliance and Resolution Regulation and the University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct ([//cdn.ecu.edu/docs/prr-uploaded-docs/Appendix B revised 9.15.2021.pdf](http://cdn.ecu.edu/docs/prr-uploaded-docs/Appendix B revised 9.15.2021.pdf)) ([//cdn.ecu.edu/docs/prr-uploaded-docs/DRAFT\\_Formatted\\_AppendixB.pdf](http://cdn.ecu.edu/docs/prr-uploaded-docs/DRAFT_Formatted_AppendixB.pdf)).

4.3.3. Where the Respondent is an ECU Community School Student. The procedures for responding to reports of Title IX Conduct committed by ECU Community School students, are detailed in the ECU Community School Handbook (<https://education.ecu.edu/ecucs/policy/>).

4.3.4. Where the Respondent is Both a Student and an Employee.

4.3.4.1. Appendix A, the Student-Respondent procedures, will apply if the Respondent is a full-time Student but not a full-time Employee;

4.3.4.2. Appendix B, the Employee-Respondent procedures, will apply if the Respondent is a full-time Employee but not a full-time Student; or

4.3.4.3. If there is a question as to the predominant role of the Respondent, the University's Title IX Coordinator or designee will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context of the Title IX Conduct). Further, where a Respondent is both a Student and an Employee, the Respondent may be subject to any of the sanctions applicable to Students or Employees.

4.3.5. Where the Respondent is a Third Party. The University's ability to take corrective action against a Third Party will be determined by the nature of the relationship of the Third Party to the University. The Title IX Coordinator or designee will determine the appropriate manner of resolution consistent with the University's commitment to a prompt and equitable process consistent with federal law, and this Regulation. Reports of Title IX Conduct by student organizations will be handled according to the procedures outlined in Appendix A and when relevant, the Student Code of Conduct.

## 5. Title IX Coordinator.

5.1. Under Title IX: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

5.2. Role of the Title IX Coordinator. The Title IX Coordinator is charged with monitoring the University's compliance with Title IX; ensuring appropriate education and training; coordinating the University's investigation, response, and resolution of all reports under this Regulation; and ensuring appropriate actions to eliminate Title IX Conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator has the authority to modify the timelines in any existing University process in order to ensure a prompt and equitable resolution to a complaint, in compliance with applicable law or regulations. The Title IX Coordinator is available to meet with any Student, Employee, or Third Party to discuss this Regulation or the accompanying procedures.

5.3. Clery Coordination. The East Carolina University Police Department (ECUPD) maintains the campus crime log and is responsible for collecting and analyzing the statistics that are reported in the Annual Security and Fire Safety Report. The Clery Coordinator within the ECU Police Department will record and report on the Annual Security and Fire Safety Report statistics related to reports of sex offenses, domestic violence, dating violence, and stalking. The definitions of these offenses for the purpose of reporting statistics are defined by the Uniform Crime Reporting National Incident-Based Reporting System, the Federal Bureau of Investigation definitions, and the Violence Against Women Act. The Title IX Coordinator coordinates with the ECU Police Department through multiple ways, including supplying relevant data for the publication of the Annual Security Report.

5.4. The Title IX Coordinator can be contacted by telephone, email, or in person during regular office hours: LaKeshia Alston Forbes, Title IX Coordinator. Old Cafeteria Building, Suite G-406, [oed@ecu.edu](mailto:oed@ecu.edu) (<mailto:oed@ecu.edu>), (252) 328-6804 (office). Reports of alleged violations of this Regulation may be made during non-business hours at (252) 328-6804, [oed@ecu.edu](mailto:oed@ecu.edu) (<mailto:oed@ecu.edu>), or through the "Report Concerns" link on our Title IX website (<https://titleix.ecu.edu/>).

5.4.1. Contact for Concerns. Concerns about the University's application of Title IX, VAWA, and the Clery Act, may be addressed to the Title IX Coordinator or Clery Coordinator; the United States Department of Education, Clery Act Compliance Division ([clery@ed.gov](mailto:clery@ed.gov)) (<mailto:clery@ed.gov>); the United States Department of Education, office for Civil Rights ([OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481); and/or the Equal Employment Opportunity Commission ([info@eeoc.gov](mailto:info@eeoc.gov) or (800) 669-4000).

5.4.2. A statement that the University does not discriminate on the basis of sex in any education program or activity as required by Title IX and inquiries about the University's application of Title IX may be referred to the University's Title IX Coordinator or the Department of Education Office of Civil Rights must be included in all materials related to applications for admission, applications for employment, and the ECU Community School. The statement must also include the contact information of the Title IX Coordinator.

5.5. The Title IX Coordinator, investigator, decision-maker, or any person who facilitates an Informal Resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

## 6. Reporting and Formal Complaints.

6.1. There are multiple channels for reporting Title IX Conduct. A Complainant may choose to report to the University, to law enforcement, to both, or to neither. These reporting options are not exclusive. Complainants may simultaneously pursue criminal and University action. The University will support Complainants in understanding, assessing, and pursuing these options. There are certain persons on campus who must report a crime, but generally those reports need not identify the complainant. For instance, campus security authorities must complete an anonymous crime reporting form, which does not generally require the disclosure of any personally identifying information about a complaining party. Rather, it is collected so that the University can stay informed about trends, areas of particular concern and target educational needs.

6.2. Law Enforcement. Complainants have the right to notify law enforcement. In keeping with its commitment to taking all appropriate steps to eliminate, prevent, and remedy all Title IX Conduct, the University urges Complainants to report concerns immediately to local law enforcement by contacting:

- 911 (for emergencies)
- Greenville Police Department (252) 329-4315 (for non-emergencies)
- Pitt County Sheriff's office (252) 902-2800 (for non-emergencies)
- ECU Police Department (252) 328-6787 (for non-emergencies)

6.2.1. Police have unique legal authority that the Title IX Coordinator lacks, including the power to seek and execute search warrants, collect forensic evidence, make arrests, and assist in seeking Emergency Protective Orders. The University will assist Complainants in notifying law enforcement if they choose to do so.

6.3. A Complainant or the Title IX Coordinator may file a formal complaint with the University alleging Title IX Conduct. A formal complaint is defined as a document filed by a Complainant (or signed by the Title IX Coordinator) alleging a violation of Title IX Conduct against a Respondent and requesting the University investigate.

6.3.1. At the time of the formal complaint, the Complainant must be participating in, or attempting to participate in, an education program or activity for which the formal complaint is filed.

6.3.2. A University investigation with respect to Title IX is separate from a criminal investigation (into complaints alleging harassment or sexual violence that constitutes a criminal offense, such as assault, battery, rape or another form of violence or sexual violence). A Complainant can file a police report at any time, including during the duration of an investigation under this regulation. The University will assist in connecting the Complainant with the law enforcement agency of the applicable jurisdiction. The standard of evidence for conviction in criminal cases ("beyond a reasonable doubt") is a higher standard than the University will use in a Title IX investigation ("preponderance of the evidence").

6.3.3. A University investigation will continue to go forward during a criminal investigation. Reporting to the police and/or the University does not end the investigatory responsibility for the University.

### 6.4. Clery Act Reporting.

6.4.1. Statistics and Annual Security and Fire Safety Report: Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. These statistics include the total number of crime reports that were "unfounded" and subsequently withheld from the crime statistics reported in the Annual Security and Fire Safety Report. Unfounded reports are those that have been fully investigated by sworn law enforcement personnel and, based on the results of this full investigation and evidence, have made formal determination that the crime report is false or baseless. Recovery of stolen property, stolen property that is of low value, the refusal of a complaining party to cooperate with law enforcement or the failure to make an arrest do not justify classifying a report as "unfounded."

6.4.2. The Clery Act also requires the University to issue timely warnings to the University community about certain crimes that have been reported and may continue to pose a serious or continuing threat to students and employees. Consistent with the Clery Act and privacy concerns, it is the University's practice to withhold the names and other personally identifying information of a possible Complainant when issuing timely warnings to the University community.

6.5. The University also urges anyone who becomes aware of an incident of Title IX Conduct to report the incident immediately to the University.

6.5.1. There is no time limit for reporting Title IX Conduct to the University under this Regulation; however, the University's ability to respond may diminish over time, as evidence may erode, memories may fade, and possible Respondents may no longer be affiliated with the University. If the Respondent is no longer a Student or an Employee, the University will provide reasonably appropriate supportive measures, assist the Complainant in identifying external reporting options, and take reasonable steps to eliminate Title IX Conduct, prevent its recurrence, and remedy its effects.

6.5.2. The Good Samaritan. The University's "Good Samaritan" regulation is applicable to a student(s) who summon(s) medical attention for a person (including themselves) in need of medical assessment and/or treatment for a problem to which the student may have contributed or caused by participating in the use and abuse of alcohol and/or other drugs. While the University does not condone violations of the Student Code of Conduct or state and federal laws, the University may take into consideration potentially life-saving actions of students who act as "Good

Samaritans" by reducing the disciplinary actions associated with alcohol and/or other drug use violations, including limited immunity to campus student conduct charges. More information about the Good Samaritan Regulation (<https://www.ecu.edu/prr/11/30/02>) can be found on the University's Policy Manual website.

## **7. Resources.**

7.1. The University offers a wide range of resources for all Students and Employees to provide support and guidance in response to any incident of Title IX Conduct. For comprehensive information on accessing University and community resources, including emergency and ongoing assistance; health, mental health, and advocacy services; options for reporting Title IX Conduct to the University and/or law enforcement; and available support with academics, housing, and employment:

7.1.1. Students should refer to the Student Resource Guides Resource and Reporting Guide for Students Reporting Incidents of Title IX Conduct and Related Misconduct or Resource and Reporting Guide for Students Accused of Title IX Conduct and Related Misconduct

7.1.2. Employees should refer to the Employee Resource Guides Resource and Reporting Guide for Employees Reporting Incidents of Title IX Conduct and Related Misconduct or Resource and Reporting Guide for Employees Accused of Title IX Conduct or Related Misconduct

7.1.3. Community School Students should refer to the ECUCS Student Handbook: <https://education.ecu.edu/ecucs/policy/> (<https://education.ecu.edu/ecucs/policy/>)

7.2. Confidential Resources. Consistent with the definition of Confidential Employees and licensed community professionals, there are a number of resources within the University and Greenville communities where Students and Employees can obtain confidential, trauma-informed counseling and support.

7.2.1. Students can also obtain such counseling at the Center for Counseling and Student Development. For a complete list of University and community-based confidential resources for Students, see the Resource and Reporting Guide for Students Reporting Incidents of Title IX Conduct and Related Misconduct ([/cdn.ecu.edu/docs/prr-uploaded-docs/R&R Guide for Student Complainant.pdf](https://cdn.ecu.edu/docs/prr-uploaded-docs/R&R_Guide_for_Student_Complainant.pdf))

7.2.2. Employees can also obtain such counseling through the Employee Assistance Program, ComPsych. For a complete list of University and community-based confidential resources for Employees, see the Resource and Reporting Guide for Employees Reporting Incidents of Title IX Conduct and Related Misconduct ([/cdn.ecu.edu/docs/prr-uploaded-docs/R&R Guide for Employee Complainant.pdf](https://cdn.ecu.edu/docs/prr-uploaded-docs/R&R_Guide_for_Employee_Complainant.pdf))

7.3. Third Parties should contact the Title IX Coordinator to discuss available University and/or community resources and reasonably available assistance.

7.4. Advisors. Both the Complainant and Respondent have the right to be represented, at the party's expense by a licensed attorney or non- attorney advocate. The advisor may be any person chosen by the party or if the party does not have an advisor, the University will provide an advisor for the purposes of conducting any cross-examination at the live hearing. The advisor shall conduct any cross-examination of other participants at any hearing.

## **8. Supportive Measures.**

8.1. The University offers a wide range of resources for Students and Employees, whether as Complainants or Respondents, to provide support and guidance throughout the initiation, investigation, and resolution of a report of Title IX Conduct. The University will offer reasonable supportive measures if requested and reasonably available, regardless of whether or not the event is reported to ECU Police or other law enforcement agencies and regardless of whether a complaining party desires to participate in University disciplinary proceedings or seek criminal charges. Supportive measures are defined as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. Supportive measures, which may be temporary or permanent, may include but are not limited to: no-contact directives, campus living modifications, transportation and parking modifications, academic modifications and support, work schedule modifications, and/or investigatory placement.

8.2. The University will maintain the privacy of any supportive measures provided under this Regulation to the extent practicable and will promptly address any violation of such measures. The Title IX Coordinator or designee has the discretion and responsibility to impose and/or modify any supportive measure based on all available information. The Title IX Coordinator or designee is available to meet with a Complainant or Respondent to address any concerns about the supportive measures.

8.3. The University will provide reasonable supportive measures to Third Parties as appropriate and available, taking into account the role of the Third Party and the nature of any contractual relationship with the University.

## **9. Privacy and Confidentiality.**

9.1. The University is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this Regulation to the extent allowed by law. The University also is committed to providing assistance to help Students, Employees and Third Parties make informed choices. With respect to any report under this Regulation, the University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate Title IX Conduct, prevent its recurrence, and remedy its effects. Privacy and confidentiality have distinct meanings under this Regulation.

9.2. Privacy. Privacy means that personally identifiable information related to a report of Title IX Conduct will be shared with a limited circle of University Employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All Employees who are involved in the University's response to reports of Title IX Conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.



9.3. **Confidentiality.** Confidentiality exists in the context of laws that protect certain relationships, including with medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, counselors, and ordained clergy, all of whom may engage in confidential communications under the law. The University has designated individuals who have the ability to have privileged communications as "Confidential Employees", as defined below. These resources adhere to strict standards of confidentiality, without sharing what an individual has told them other than in limited circumstances. These resources can provide information and other wellness services. When information is shared by an individual with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) there is a legally mandated reporting requirement, regarding information concerning conduct involving suspected abuse, neglect or dependency of a juvenile (one who has not reached their eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States).

9.3.1. **Duty to Report:** A Confidential Employee will not disclose information about Title IX Conduct to the University's Title IX Coordinator without the individual's permission (subject to the exceptions set forth in Section 9.3 of this Regulation).

9.4. A "Responsible Employee" is (1) a person designated as a supervisor of any University employee; (2) persons designated as a Campus Security Authority, with the exception of the University Ombud; (3) any ECU employee responsible for coordinating or supervising clinical education experiences, practicum and/or internships; or (4) any employee or staff member of the ECU Community School. Responsible Employees must report incidents of Title IX Conduct to the Title IX coordinator and must not attempt mediation with the Complainant and Respondent. Faculty and other ECU employees who are responsible for coordinating or supervising clinical education experiences, practicum and/or internships are considered to be Responsible Employees with respect to the students participating in those experiences, and are required to report any allegations of Title IX Conduct that they receive relating to those students to the Title IX coordinator. The University reserves the right to take disciplinary action against a Responsible Employee, up to and including discharge from employment, who fails to report Title IX Conduct to the Title IX Coordinator.

9.4.1. Campus Security Authority (CSA) are ECU officials who have significant responsibility for student and campus activities are designated as Campus Security Authorities. ECU positions that are CSAs are listed in the annual security report that is published on October 1 each year on the ECU Police website. These individuals include, but are not limited to, officials in the Office for Equity and Diversity, the ECUPD, Office of Student Rights and Responsibilities, the Campus Living Conduct Office, any Campus Living coordinator or resident advisor, Directors and Associate Directors of Athletics, coaches for athletic teams (excluding volunteer coaches and/or advisors for club sports), and Advisors to University Recognized Clubs and Organizations. Any CSA who learns of an allegation of Title IX Conduct must ensure that the Anonymous Crime Reporting Form is completed and submitted to the ECU Police Department.

9.4.1.1. A Campus Security Authority are not faculty members who do not have any responsibility for student and campus activity beyond the classroom and clerical staff are not considered CSAs, and, therefore, are not required to complete the Anonymous Crime Reporting Form. All individuals receiving reports of crimes, are encouraged to offer to assist the reporter in completing an anonymous crime report for inclusion in the annual security report statistics. Counselors in the Center for Counseling and Student Development and medical providers in Student Health Services, are not required to report information received when they are functioning within the scope of their license, certification or religious training, and performing their official duties providing mental health counseling, medical care or religious counseling.

9.4.2. **Duty to Report:** A Responsible Employee is required to report to the University's Title IX Coordinator all relevant details (obtained directly or indirectly) about an incident of Title IX Conduct that involves a campus community member as a Complainant, Respondent, and/or witness, including dates, times, locations, and names of parties and witnesses. Responsible Employees include Resident Assistants, and Graduate Teaching Assistants, when disclosures are made to any of them in their capacities as employees. Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g., "Take Back the Night," candlelight vigils, protests, "survivor speak-outs", or other public forums in which students may disclose incidents of Title IX Conduct; collectively, "Public Awareness Events"), or (2) during a student's participation as a subject in an Institutional Review Board-approved human subjects research protocol ("IRB Research"). The University may provide information about Students' Title IX rights and about available University and community resources and support at Public Awareness Events, however, and Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all Student subjects of IRB Research.

9.4.3. **Responsibility to Report Title IX Conduct Where Either the Complainant or the Respondent Is an Employee:** Under this Regulation, supervisors, management and human resources professionals are required to report to the University's Title IX Coordinator all relevant details about an incident of Title IX Conduct where either the Complainant or the Respondent is an Employee. Reporting is required when such supervisors, management and human resource professionals know (by reason of a direct or indirect disclosure) or should have known of such Title IX Conduct. For academic faculty, supervisors include department chairs, deans, and other unit administrators.

9.4.4. **Training:** New supervisors (including those recently promoted to supervisor status) will be required to complete responsible employee training within 90 days of their status change and every three calendar years thereafter.

## **10. Violations of Law.**

10.1. Behavior that violates this Regulation may also constitute a crime. For example, North Carolina criminalizes and punishes some forms of Sexual Assault, Dating and Domestic Violence, Sexual Exploitation, Stalking, and Assault. The criminal statutes that may apply in cases Sexual Assault may be found in N.C. General Statutes sections 14-27.20 through 14-27.36. The criminal statutes that relate to Stalking may be found in N.C. General Statutes sections 14-277.3A. The criminal statutes that relate to Domestic Violence may be found in N.C. General Statutes section 50B. This compilation of criminal statutes is not exhaustive, but is offered to notify the University community that, some forms of Title IX Conduct may also constitute crimes under North Carolina law, which may subject a person to criminal prosecution and punishment in addition to any sanctions under this Regulation.

## **11. Constitutional Rights.**

11.1. Nothing in this Regulation restricts any individual constitutional rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution or deprives an individual of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution or restrict any other rights guaranteed against government action by the U.S. Constitution.

## **12. Prevention and Awareness Programs.**

12.1. The University is committed to the prevention of Title IX Conduct through regular and ongoing education and awareness programs. Incoming Students and new Employees receive primary prevention and awareness programming as part of their orientation, and returning Students and current Employees receive ongoing training and related education. For a description of the University's Title IX Conduct prevention and awareness programs, including programs on minimizing the risk of incidents of Title IX Conduct and bystander intervention, see Appendix C.

## **13. Training.**

13.1. The University's Title IX Coordinator, investigators, decision-makers (including Hearing Panel member, Conduct Administrator, and/or appellate officer/body) and personnel who facilitate informal resolution of complaints will receive annual training on: the definitions under this Regulation; 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), how to serve impartially (including avoiding prejudgment of the facts at issue, conflicts of interest, and bias). Investigators and decision-makers will receive training on issues of relevance, including how to apply rape shield protections for complainants. Decision-makers will receive training on technology to be used at the live hearing. The materials utilized to train these individuals will be posted on the University's Title IX webpage as allowed by law. A copy of any materials unavailable to be posted will be available for public inspection with the Office for Equity and Diversity.

## **14. Obligation to Provide Truthful Information.**

14.1. All University community members are expected to provide truthful information in any report or proceeding under this Regulation. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Title IX Conduct is prohibited and subject to disciplinary sanctions under the University's Student Code of Conduct (including Section 2.11 of the Code) and disciplinary action under the appropriate Employee disciplinary policy. This provision does not apply to reports made or information provided in good faith, even when the alleged facts are later not substantiated.

## **15. Records Retention.**

15.1. ECU will maintain the investigation record as required by law, to include records that must be maintained as a confidential personnel record in accordance with N.C. General Statute Chapter 126 and/or a confidential student record in accordance with the Family Educational Rights and Privacy Act (FERPA). The information contained in the investigation record generally will not be released without the written and dated consent of the employee or student identified in the record. However, investigation records may be shared with third parties to the extent allowed under law. The University will retain for a minimum period of seven years the following:

15.1.1. The record of each investigation including:

15.1.1.1. Any determination regarding responsibility and any audio recording or transcript of the hearing;

15.1.1.2. Any disciplinary sanctions imposed on the Respondent;

15.1.1.3. Any remedies provided to the Complainant to restore or preserve equal access to the University's education program or activity;

15.1.1.4. The record of any appeal and result of the appeal;

15.1.2. Any informal resolution and the corresponding result;

15.1.3. All materials used to train Title IX Coordinators, investigators, decision-makers, and any personnel who facilitate an informal resolution process;

15.1.4. Any actions taken in response to a report or formal complaint of sexual harassment.

## **16. Regulation Review.**

16.1. This Regulation is maintained by the Title IX Coordinator. The University will review and update this Regulation annually, as appropriate. The University will evaluate, among other things, any changes in legal requirements, existing University resources, and the resolution of cases from the preceding year (including, but not limited to, timeframes for completion and sanctions and remedies imposed). The Title IX Coordinator shall certify to the Chancellor.

Appendix A - Procedures for Reports Against Students ([//cdn.ecu.edu/docs/prr-uploaded-docs/Appendix A revised 9.15.2021.pdf](https://cdn.ecu.edu/docs/prr-uploaded-docs/Appendix A revised 9.15.2021.pdf)); Investigating and Resolving Reports Under the Title IX Compliance and Resolution Regulation and the University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct

Appendix B - Procedures for Reports Against Employees ([//cdn.ecu.edu/docs/prr-uploaded-docs/Appendix B revised 9.15.2021.pdf](https://cdn.ecu.edu/docs/prr-uploaded-docs/Appendix B revised 9.15.2021.pdf)); Investigating and Resolving Reports Under the Title IX Compliance and Resolution Regulation and the University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct

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