



NORTH CAROLINA AGRICULTURAL AND TECHNICAL STATE UNIVERSITY

SEC. III-EQUAL EMPLOYMENT OPPORTUNITY 2.0
SEC. IV-SAFETY 1.0—SEXUAL MISCONDUCT

Sexual Misconduct: Discrimination, Harassment and Sexual Assault

ADMINISTRATIVE POLICY

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1. PURPOSE AND PROHIBITED CONDUCT

North Carolina Agricultural and Technical State University (hereafter “University”) strives to provide an all-inclusive and welcoming culture that values diversity, and fosters tolerance and

mutual respect among members of the campus community. The University values safety, diversity, education, and equity. There shall be no unlawful discrimination at North Carolina A&T State University against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, genetic information, or veteran status.

The University is firmly committed to maintaining a campus environment in which all persons can exercise their right to participate fully in campus life free from all forms of sex, sexual orientation, and gender-based discrimination, harassment, and related sexual misconduct. The University's protection of these statuses and the University's response to sexual assault, sexual violence, dating/domestic violence, and stalking are governed by the following federal laws:

- Title VII of the Civil Rights Act of 1964,
- Title IX of the Education Amendments of 1972,
- The Violence Against Women Act (VAWA) Reauthorization 2013, and
- The Campus Sexual Violence Elimination (SaVE) Act (amending Jeanne Clery Act)

This policy prohibits discrimination and harassment based on sex, sexual orientation, gender, gender identity, and gender expression. This policy also prohibits sexual assault, sexual exploitation, stalking and dating/domestic violence. Additionally, this policy prohibits 1) complicity for knowingly assisting in an act that violates this Policy and 2) retaliation for an individual's good faith participation in the reporting, investigation and/or adjudication of alleged violations or opposing discriminatory practices or policies. Such acts violate the essential dignity of our community member(s) and are contrary to our institutional values. Students or employees who violate this Policy may face discipline up to and including expulsion or termination.

This policy shall not be construed or applied to restrict academic freedom at the University, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

To the extent the provisions of any other University policy conflict with the provisions of this Policy, this Policy shall prevail.

2. SCOPE

2.1. Individuals Covered

This policy applies to the conduct of all University:

- undergraduate students (regardless of enrollment status),
- faculty members,
- EPA non-faculty employees,
- SPA employees,
- graduate, professional and doctoral students (regardless of enrollment status),
- post-doctoral scholars and student employees, and
- third parties (such as contractors, vendors, volunteers, program participants, alumni/ae, visitors, or local residents).

Third parties are both protected by and subject to this Policy. A third party may make a complaint of a violation of this policy committed by a member of the University community. A third party may also be permanently barred from the University or subject to other restrictions for failing to comply with this Policy.

2.2. Locations Covered

This policy applies to conduct that occurs:

- On University property (i.e., on campus) and adjacent public property (sidewalks, streets, and parking facilities). All actions by a member of the University community that involve the use of the University's computing and network resources from a remote location, including but not limited to accessing email accounts, will be deemed to have occurred on campus; and
- Off University property (i.e., off campus):
 - when the conduct is associated with a University-sponsored program or activity, such as travel, study abroad, research, or internship programs or
 - when such conduct may have a continuing adverse effect or could create a hostile environment on campus.

Judgments about these matters will depend on facts of an individual case. In determining whether the University has jurisdiction over off campus conduct that is not part of an educational program or activity of the University, the Affirmative Action Officer/Title IX Coordinator will consider the seriousness of the alleged conduct, the risk of harm involved, whether both parties are members of the campus community, and whether the off campus conduct is part of a series of actions that occurred both on and off campus.

The policy applies in all University programs and activities, including, but not limited to, athletics, instruction, grading, university housing, and university employment.

2.3. Relationships with Individuals in Authority

Amorous, sexual or romantic relationships involving individuals in a teacher-student relationship or in the context of employment supervision or evaluation is not, in and of itself, sexual misconduct as defined by this Policy and will not be investigated or adjudicated under this Policy. Such an interaction is a violation of another University policy and subject to separate disciplinary procedures. See the following policies:

- Improper Relationships Between Students and Employees ,
- Employment of Related Persons Policy, and
- Employment of Relatives (Nepotism) (State Human Resources Manual).

3. PROHIBITED CONDUCT AND DEFINITIONS

In determining whether alleged conduct violates this policy, 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 policy can be committed by individuals of any gender, and it can occur between individuals

of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

3.1. Sex Discrimination: Sex Discrimination is unfavorable treatment of a person based on sex or gender when the unfavorable treatment unreasonably interferes with or limits:

- An employee's or applicant for employment's access to employment, or the conditions and/or benefits of employment (e.g., hiring, working conditions, advancement, assignment);
- A student's or admission applicant's ability to participate in, access, or benefit from educational programs, services, or activities (e.g., enrollment, academic standing, grades, course assignment, campus housing, extracurricular activities);
- An authorized volunteer's ability to participate in a volunteer activity; or
- A guest's or visitor's ability to participate in, access, or benefit from the University's activities or programs.

Sex Discrimination includes sexual harassment and gender-based harassment, which are defined below. Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex.

Discrimination against an individual because that person is transgender, gay, lesbian or bisexual is unlawful discrimination because of sex. This is also known as gender identity discrimination. An example of gender-identity discrimination is adverse actions taken because of the person's non-conformance with sex-stereotypes.

3.2. Sexual Harassment: Sexual harassment is a form of sex discrimination. It is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, electronic, physical or other conduct or communication of a sexual nature when:

- Submission to or rejection of such conduct or communication is made either explicitly or implicitly a term or condition of instruction, employment, or participation in any University activity or benefit;
- Submission to or rejection of such conduct or communication is used as a basis for decisions affecting employment, education, living arrangements, or participation in a University program or activity; or
- Such conduct or communication is sufficiently severe, pervasive, or persistent, AND objectively offensive as to have the effect of creating an intimidating, hostile or offensive environment that unreasonably interferes with a person's educational experience, working conditions, or participation in a University program or activities so as to effectively deny equal access to the University's resources and opportunities ("hostile environment").

A hostile environment is determined by looking at whether the conduct is objectively offensive (i.e., a reasonable person would find it to be) and subjectively offensive (i.e., the person who is the object of the unwelcome conduct finds it to be).

All relevant circumstances are examined as part of this determination, including but not limited to:

- the type of harassment (e.g. whether verbal, physical, electronic);
- the frequency of the conduct, the severity of the conduct, the relationship of the individuals involved,
- whether the conduct was physically threatening,
- whether the conduct unreasonably interfered with work performance (for employees) or academic performance (for students).

Mere offensiveness of a particular expression, standing alone, is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident of sexual misconduct, such as a sexual assault, even if isolated, can be sufficient.

3.3. Gender-Based Harassment: Gender-based harassment occurs when unwelcome verbal, non-verbal, physical, electronic, or other conduct or communication based on a person's sexual orientation, gender identity, or gender expression creates a "hostile environment" as described in the definition for Sexual Harassment.

Examples:

- verbal, physical, or electronic conduct based on sex, gender, sexual orientation, or sex-stereotyping that creates a hostile, intimidating, or abusive environment as defined above, even if those acts do not involve conduct of a sexual nature; or
- harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex or for failing to conform to stereotypical notions of masculinity and femininity, regardless of the actual or perceived sex, gender, sexual orientation, gender identity, or gender expression of the individuals involved.

3.4. Sexual Misconduct

The following behaviors constitute sexual misconduct and are prohibited under this policy. Sexual misconduct is a broad term encompassing any sexual behavior that is committed without effective consent, defined below. These behaviors are serious violations and represent a threat to the safety of the university.

Effective Consent: is informed, freely and actively given, and is based on rational and reasonable judgment.

- It must be communicated verbally;
- It must be mutually understandable (when a reasonable person would consider the words that you or your partner(s) have expressed demonstrate a desire to do the same thing, at the same time, in the same way, with one another);
- The initiator is responsible for making sure effective consent is given;
- It is not silence, passivity, or absence of resistance;
- It can never be given by someone who is mentally disabled, mentally incapacitated (e.g. by drugs or alcohol), or physically helpless (e.g. unconscious, physically unable to resist or communicate unwillingness);

- It cannot result from force, threat of force, coercion, fraud, intimidation or incapacitation.

For a detailed explanation of Consent, see the Student Handbook (currently Section VIII.A.).

- 3.4.1. Non-Consensual Sexual Penetration (Rape):** is any sexual penetration (anal, oral or vaginal), however slight, with any object or sexual intercourse, *without effective consent*. Sexual penetration includes vaginal or anal penetration by a penis, object, tongue, or finger; and oral copulation-by-mouth to genital contact, or genital to mouth contact.
- 3.4.2. Non-Consensual Sexual Touching, Disrobing and/or Exposure (Sexual Assault):** is any intentional sexual touching, however slight, with any object *without effective consent*. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth (kissing) or other bodily orifice of another person or any other bodily contact in a sexual manner, including over clothing. Any disrobing of another or exposure to another by an initiator without effective consent.
- 3.4.3. Sexual Misconduct by Incapacity:** It is a violation of this policy if the initiator has sex with someone the initiator knows, or reasonably should know, to be incapacitated by alcohol, drugs, sleep, or illness. An incapacitated person is not able to make rational, reasonable judgments and therefore is incapable of giving effective consent. Someone is incapacitated when they cannot understand who, what, when, where, why, or how, with respect to the sexual interaction.
- 3.4.4. Sexual Exploitation:** Sexual exploitation occurs when a person violates the sexual privacy of another or takes non-consensual, unfair, or abusive sexual advantage of another for their own advantage or benefit, even though that behavior does not constitute one of the other sexual misconduct offenses described above. Examples include, but are not limited to:
- Non-consensual photographing or video or audio taping with intent to distribute videos /pictures of sexual activity.
 - Going beyond the bounds of consent (such as letting friends hide in the closet to watch you having consensual sex).
 - Knowingly exposing another person to a sexually transmitted infection, such as HIV or herpes, without disclosing your STI status.
 - Threatening to disclose an individual's sexual orientation, gender identity, or gender expression.
 - Knowingly failing to use contraception without the other party's knowledge.
 - Inducing Incapacitation for the purpose of taking sexual advantage of another person.
 - Stalking with a sexual component. Stalking may take many forms, including persistent calling, texting, or posting on a social networking site as well as physical stalking. When the content of the messages or the nature of the physical stalking is of a sexual nature sexual misconduct has occurred.

- Voyeurism is a form of sexual exploitation in which one individual engages in secretive observation of another for personal sexual pleasure or engages in non-consensual video or audio taping of sexual acts. Although the source for the secretive viewing or taping may be unaware of the observation, this behavior is a form of sexual misconduct and violates the integrity of the unaware student.

3.4.5. Attempted Act: Attempts to commit sexual misconduct are also prohibited under this policy, as is aiding the commission of sexual misconduct as an accomplice.

3.5. Other Prohibited Behaviors

The following conduct is also prohibited under this policy.

- 3.5.1. Stalking:** Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others, or to suffer substantial emotional distress. Stalking may include repeatedly following, harassing, threatening, or intimidating another in person or by telephone, mail, electronic communication, social media, or any other action, device or method. Stalking may involve individuals who are known to one another or who have a current or previous relationship or may involve individuals who are strangers.
- 3.5.2. Dating Violence:** Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be based on the length and type of relationship and the frequency of interaction with the persons involved in the relationship. Dating violence includes acts of violence, threat or intimidation that may be physical, emotional/psychological, sexual or economic in nature. It is important to recognize that emotional, verbal, and economic abuse are part of the web of dating violence and can exist without the presence of physical abuse.
- 3.5.3. Domestic Violence:** Domestic Violence includes crimes of violence committed against a victim by: (i) a current or former spouse or intimate partner; (ii) a person with whom the victim shares a child; (iii) a person who is or has cohabitated with the victim as a spouse or intimate partner; (iv) a person similarly situated to a spouse of the victim; (v) a current or former household member (including same sex partners who live together or have lived together and a non-romantic roommate relationship) or (v) any other person against whom the victim is protected under North Carolina's domestic and family violence laws.

Violence includes physical, sexual, emotional, economic, or psychological actions or threats of actions that a reasonable person in similar circumstances and with similar identities would find intimidating, frightening, terrorizing, or threatening. It is important to recognize that emotional, verbal, and economic abuse are part of the web of domestic violence and can exist without the presence of physical abuse.

3.5.4. Retaliation is any adverse action against an individual who files or participates in an investigation, proceeding or hearing involving a violation of this policy or who opposes a discriminatory practice or policy. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Any individual who engages in Retaliation will be subject to prompt and appropriate disciplinary action. Individuals who have a concern about potential or actual Retaliation should contact the Affirmative Action Officer/Title IX Coordinator for assistance in addressing the concern.

3.5.5. False Reporting. Submitting a Complaint under this Policy that is not in good faith, or providing false or misleading information in any investigation of Complaints, is also prohibited and may result in discipline.

3.5.6. Complicity. Complicity is any act that knowingly aids, facilitates, promotes, or encourages the commission of prohibited conduct by another person.

4. UNIVERSITY'S RESPONSIBILITY

4.1. Response: The University has a duty to investigate and to respond appropriately to all allegations of violations of this Policy regardless of how they are reported. In other words, the university remains responsible to investigate allegations of discrimination, harassment, sexual misconduct, retaliation or other prohibited behaviors even when, for example:

- A person reports a possible violation, but does not wish to have an investigation;
- A person reports a possible violation and asks that either his/her identity or the information provided be kept confidential; or
- A person anonymously reports a possible violation and the report includes sufficient specificity to allow the university to investigate the report.

4.2. Privacy and Confidentiality:

4.2.1. For any report of violation under this Policy, every effort will be made to respect and safeguard the privacy interests of all individuals involved in a manner consistent with the need for a careful investigation and assessment of the allegation and any necessary steps to eliminate the conduct, prevent its recurrence, and address its effects.

4.2.2. Complete confidentiality cannot be guaranteed, and information about the allegations may be shared with others when necessary to investigate or address the prohibited conduct or to prevent its recurrence. Sharing of information will be limited to persons on a need to know basis.

4.2.3. If an individual requests complete confidentiality and/or asks that the university not investigate or seek action against the alleged Respondent, such request may limit the university's ability to respond fully to the complaint, including pursuing

any disciplinary action against the alleged Respondent. The university ultimately determines whether or not it can honor such a request while providing a safe and nondiscriminatory environment for the university community. Such determination shall be made by the Affirmative Action Officer/Title IX Coordinator, in consultation with the Office of General Counsel.

4.2.4. Individuals bringing forth allegations of sexual violence who request complete confidentiality are strongly encouraged to consult with individuals, who by law have special professional status, such as mental health counselors, physicians, clergy or private attorneys.

4.2.5. Individuals involved in investigations or disciplinary proceedings under this policy are expected to exercise discretion in sharing information in order to safeguard the integrity of the process, to protect privacy, and to avoid the appearance of retaliation. While discretion regarding the process is important, Complainants and Respondents are not restricted from discussing and sharing information with others who may support or assist them in presenting their case.

4.3. Interim Measures: Upon receipt of a Complaint of a violation of this Policy, the University will provide reasonable and appropriate interim measures designed to preserve the Complainant's employment and educational experience, to ensure the safety of all parties and the broader University community, to maintain the integrity of the investigative and/or resolution process, and to deter retaliation. Unless directly involved, the Respondent will not be notified of the interim measures afforded the Complainant.

Interim measures may include:

- Access to counseling services and assistance in arranging an initial appointment;
- Change in work schedule or job assignment;
- Change in office space or work environment
- Temporary adjustment of supervisory relationships;
- Rescheduling of exams and assignments;
- Change in class schedule, including the ability to transfer course sections or withdraw from a course without penalty;
- Providing alternative course completion options;
- Change in campus housing;
- Imposition of an on-campus "no contact order," an administrative remedy designed to curtail contact and communications between two or more individuals;
- Limiting access to certain or all University facilities or activities pending resolution of the matter
- Voluntary leave of absence
- Providing an escort to assure safe movement between classes, jobs, and activities
- Arranging for medical services
- Providing academic support services, such as tutoring
- University-imposed leave, suspension, or separation for the Respondent

- Referral to the local Civil Clerk of Courts to seek a Civil No-Contact Order (against an abuser, stalker or sexual harasser not in an intimate or familial relationship such as an acquaintance, co-worker, neighbor, or stranger) or a Domestic Violence Protective Order (against an abuser in a intimate or familial relationship)
- Any other measure that can be tailored to the involved individuals to achieve the goals of this Policy;

Any interim measures will not disproportionately impact the complainant. Upon receiving notice, the University will take immediate action to enforce a previously implemented measure and disciplinary penalties can be imposed for failing to abide by a University-imposed measure.

4.4. Impartiality and Conflicts of Interest

- 4.4.1.** An investigator will be impartial and unbiased, will disclose any real or reasonably perceived conflicts of interest, and will have training in investigating and evaluating conduct under the Policy, including applicable confidentiality requirements. A Complainant or Respondent may also challenge an investigator on the basis of a real or reasonably perceived conflict of interest.
- 4.4.2.** If a conflict of interest is identified before an investigation has begun, then the Affirmative Action Officer/Title IX Coordinator will provide a secondary individual to assist with or take over the investigation.
- 4.4.3.** If a conflict of interest is identified after an investigation has begun, the investigator may continue to investigate if, after full disclosure of a potential conflict of interest, the Complainant and the Respondent are given the opportunity to request a secondary individual to complete the investigation and decline to so request. If the parties feel that the investigator can remain unbiased they will be asked to sign a continuation agreement, to that effect before the investigator will continue.

4.5. Timing of Investigations and Any Related Disciplinary Proceedings

- 4.5.1.** The Affirmative Action Officer/Title IX Coordinator will seek to complete the investigation and any resulting disciplinary process within 30 calendar days after receipt of the complaint or report. The University will seek to complete any appeal within 30 calendar days after receipt of the appeal.
- 4.5.2.** There may be circumstances that require the extension of timeframes for good cause, including extension beyond 45 business days. Timeframes may be extended to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, or accommodate delays by the parties; 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 timeframes for good cause, and the reason for the extension.

- 4.5.3. Investigations will proceed according to the aforementioned timeframes during the summer and at other times when the University is not in session. The Title IX Coordinator will work with the parties to balance the need for promptness and the preference for in-person meetings regarding the investigation.
- 4.5.4. Timeframes for all phases of the disciplinary process, including the investigation, any related disciplinary proceedings, and any related appeal, apply equally to both Complainant and Respondent.

5. TITLE IX COMPLAINT PROCEDURES

North Carolina A&T State will, as determined by the Title IX Coordinator, promptly thoroughly and impartially respond to all complaints of violations of this Policy. The University will take appropriate steps to address policy violations whenever substantiated to stop the discrimination, harassment, sexual misconduct, retaliation, or other prohibited behavior, to remedy its effects and to prevent its recurrence. This policy describes the procedure for reporting, filing, processing and resolving complaints.

5.1. Definitions

- 5.1.1. **Complaint:** Allegations of violations of this Policy reported to the Affirmative Action Officer/Title IX Coordinator, referred to the Affirmative Action Officer/Title IX Coordinator pursuant to a university grievance procedure (as defined below), or an EEO Informal Inquiry submitted by an employee covered by the State Human Resources Act (SHRA) will be treated as a Complaint.
- 5.1.2. **Complainant:** An individual (or individuals) who submits a Complaint of discrimination, harassment, sexual misconduct, or other prohibited behavior (including retaliation) to the Affirmative Action Officer/Title IX Coordinator for processing pursuant to this procedure. Generally the Complainant is the person who allegedly experienced the prohibited conduct but the University may act as a Complainant if no one else does.
- 5.1.3. **Confidential Resources:** are confidential professionals on and off campus, including counselors, medical health providers, clergy, rape crisis counselors, and private attorneys. Information shared with such a confidential professional may not be disclosed, without the individual's express written permission, unless there is a continuing threat of serious violence to the patient/client or to others or there is a legal obligation to reveal such information. A complaint may still be filed after consulting with a Confidential Resource. Confidential Resources for students are listed in the Student Handbook, Gender-Based Policy.
- 5.1.4. **Investigator:** The investigator may be the Affirmative Action Officer/Title IX Coordinator, or one or more other University employees designated by the Affirmative Action Officer/Title IX Coordinator and appropriately trained in

investigating and evaluating conduct under this Policy, including applicable confidentiality requirements and interim measures to protect the safety of the parties.

- 5.1.5. Reporting Officials.** The employees designated to coordinate the University's compliance with regard to sexual discrimination, harassment and retaliation are:

Affirmative Action Officer/Title IX Coordinator

Linda Mangum

Director of Employee Relations/Affirmative Action Officer

Division of Human Resources

1020 E. Wendover Ave., Greensboro, NC 27405

(336) 334-7862

lmangum@ncat.edu

University Police Department

406 Laurel Street/Ward Hall, Greensboro NC 27411

(336) 334-7128

(336) 334-7675

(336) 334-7879

24-hour emergency number

Anonymous Tip Line

- 5.1.6. Respondent:** are the individual(s) named by the Complainant as the person(s) who engaged in the alleged discrimination, harassment, sexual misconduct, or other prohibited misconduct, or other prohibited behaviors (including retaliation).
- 5.1.7. Responsible Employee:** is any University employee with administrative or supervisory authority or who has been designated as a Campus Security Authority. Responsible Employee includes, for example, members of the Board of Trustees, the chancellor, vice chancellors, deans, directors, department chairs, coaches, Student Affairs professionals and staff (including resident advisors), faculty (including adjuncts and teaching assistants), and staff who serve as advisors to student groups. Sworn officers of the University Police Department are Responsible Employees. Employees with protected confidentiality status (mental health counselors and student health services employees) are not considered Responsible Employees.
- 5.1.8. Support Person:** If the Complainant is a student, the Complainant and the Respondent each may bring one Support Person to interviews with the Investigator. The Support Person is an ally who provides comfort and helps the Complainant or Respondent. The Support Person may include student, faculty, or staff. A student Complainant may use a Trained Sexual Misconduct Advisor, as defined in the Student Gender-Based Policy, as a Support Person. For some appeals, a Support Person may include an attorney.
- 5.1.9. University Grievance Procedure:** For purposes of this policy, "university grievance procedure" includes Regulations on Faculty Grievance, Employment Policies for EPA Non-Faculty and SPA Employee Grievance Policy. **

5.2. Title IX Reporting

5.2.1. Reporting Obligations. All individuals (except those with protected confidentiality status) must report any suspected violations of this Policy directly to a Reporting Official (identified in Section 5.1.5) regardless of when or where the incident occurred and regardless of how the individual became aware of the incident. This means telling the Reporting Official what happened, in person, by telephone, in writing, by e-mail, electronically, or anonymously. The individual making the report is encouraged to provide as much detailed information as possible to allow the University to investigate and respond as appropriate.

In emergency situations, if there is a suspected crime in progress, or imminent or serious threats to the safety of anyone, the University Police Department (Section 5.1.5) should be contacted immediately.

All individuals having experienced a violation of this Policy are also encouraged to consult with a Confidential Resource (5.1.3) as appropriate and to seek any necessary help from campus or community resources. A Complaint may be submitted under Section 5.2.4 after consulting with a Confidential Resource.

5.2.2. Reporting by Responsible Employees. Responsible Employees (Section 5.1.7), who become aware of a possible violation of this Policy, will respect the individual's privacy, but **must** report the incident (including date, time, place, what occurred, and identity of individuals involved) to the Affirmative Action Officer/Title IX Coordinator within 24 hours of receiving the information. Such reporting ensures timely support for all parties and enables an effective and consistent institutional response.

5.2.3. Filing a Complaint. The Affirmative Action Officer/Title IX Coordinator shall be responsible for receiving and processing any and all Complaints of alleged violations of this Policy. Any member of the University community (including, but not limited to students, prospective students, employees, prospective employees, vendors, contractors, visitors, and persons entitled to the services of the University) may file a Complaint. Complaints may be made known either orally or in writing to the Affirmative Action Officer/Title IX Coordinator, or filed on the Sexual Harassment Complaint Form available from the Division of Human Resources or the website: <http://www.ncat.edu/hr/policies/index.html>.

5.2.4. Referral to Law Enforcement. In cases of sexual violence, the University will notify the Complainant of the right to file a criminal complaint with local law enforcement and will cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process. Although cooperation with law enforcement may require the University to temporarily suspend the fact-finding aspect of an investigation, 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 for the safety of the Complainant(s) and the campus community, and the avoidance of retaliation.

- 5.2.5. Timeliness.** There is no time limit for reporting but students and employees are encouraged to report any violation as soon as possible in order to maximize the University's ability to obtain information and conduct a thorough, impartial and reliable investigation.

If the Respondent is no longer a student or employee at the time of the Complaint, the University may not be able to take disciplinary action against the Respondent, but it will still seek to meet its Title IX obligations by providing support for the Complainant and taking whatever steps it reasonably can to end the prohibited behavior, prevent its recurrence, and address its effects.

CAUTION: There are time limits for filing a grievance under various grievance procedures for employees (see Section 5.2.7 for SPA employees) and for filing a complaint with the Equal Employment Opportunity Commission, the Office of Civil Rights, the Department of Justice, and other agencies.

- 5.2.6. Good Samaritan/Leniency.** To encourage reports of violations of the Policy by Complainants and third parties, the University may at any point in an investigation or proceeding offer leniency with respect to violations of other University policies that may come to light as a result of such reports, depending on the circumstances.

- 5.2.7. SPA Employee Grievance Policy.** Employees and applicants covered by the SPA Employees Grievance Policy must file a complaint with the Affirmative Action Officer/Title IX Coordinator within 15 calendar days of the alleged discriminatory, harassing or retaliatory action that forms the basis of the Complaint before initiating a formal internal grievance in order to preserve their rights of appeal under the SPA Employee Grievance Policy. Employees who do not meet the 15-day time limit may not file a grievance under the SPA Employee Grievance Policy but may still file a Complaint under this policy with the Affirmative Action Officer/Title IX Coordinator; such Complaint will be reviewed and addressed either formally or through mediation, as may be required by Federal law. The SPA Employee Grievance Policy may be found at http://www.ncat.edu/hr/documents/policies/eeo/spa_grievance_policy-university_2014.pdf.

- 5.2.8. Complaints Referred through a University Grievance Procedure.** Allegations of violations of this Policy (not previously filed as a Complaint) that are included in a grievance filed pursuant to a University Grievance/Appeal Procedure will be considered a Complaint and referred for formal processing under this Policy. The referral should occur as soon as possible after the grievance is filed.

5.2.9. Regulatory Agencies. All employees and students retain the option of filing a Complaint directly with:

- The Equal Employment Opportunity Commission (EEOC) on 1-800-669-4000,
- The Office of Administrative Hearings-Civil Rights Division,
- U.S. Department of Education, Office for Civil Rights on 1-800-421-3481 or OCR@ed.gov, [contact information for regional office: <https://wdcrobcolp01.ed.gov/cfapps/OCR/contactus.cfm>]; or
- The Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Justice Department of Justice on 1-888-848-5306, <http://www.justice.gov/crt/complaint/#three>, or other relevant agency.

5.2.10. Reports Involving Minors. Individuals who suspect that a child is being harmed or observe a child being harmed shall contact law enforcement by dialing 911.

In addition, under North Carolina law, any person who reasonably suspects that a child has been abused or neglected by a parent, guardian, or caregiver has an obligation to report that suspicion to a county department of social services. The Guilford County Department of Social Services may be reached at 336-641-3795.

5.3. Title IX Preliminary Review

Once a Complaint has been received by the Affirmative Action Officer/Title IX Coordinator, an Investigator will conduct a preliminary review of the Complaint to determine whether the Complaint alleges facts that, if true, might constitute a violation. The Complainant is responsible for providing the factual basis of his or her Complaint to the Investigator. If the allegations are unclear or require clarification, the Investigator may seek additional information from the Complainant as part of the preliminary review.

5.3.1. Initiation of Investigation. When a preliminary review of a Complaint indicates that the allegations, if true, might constitute a violation, the Affirmative Action Officer/Title IX Coordinator will initiate an investigation to determine if the facts are true and to determine whether a policy violation has occurred.

5.3.2. Administrative Closing. When the preliminary review of the Complaint indicates the allegations within the Complaint would not constitute a policy violation, the Investigator will forward an investigative report to the Affirmative Action Officer/Title IX Coordinator recommending that processing of the Complaint be administratively closed. Based on the Investigator's report, the Affirmative Action Officer/Title IX Coordinator will determine whether to continue the processing of the Complaint by the Investigator or to approve the administrative closing. If administrative closing is approved, the Affirmative Action Officer/Title IX Coordinator will notify the Complainant in writing that the process has been administratively closed because the allegations, even if taken as true, would not constitute a policy violation. When a Complaint is administratively closed following a preliminary review, the closure precludes the issues raised in the Complaint from proceeding through any university grievance procedure. When appropriate, the Affirmative Action Officer/Title IX

Coordinator will consult with the supervisor to ensure that any inappropriate conduct is addressed, even when the allegations do not rise to the level of a policy violation.

- 5.3.3. Referral.** If the Affirmative Action Officer/Title IX Coordinator determines that the Complaint is outside the scope of this policy, the Affirmative Action Officer/Title IX Coordinator may refer the complaint to another office for review and action.
- 5.3.4. Referral to Student Affairs.** Complaints against a student will be referred to the Office of Student Affairs to be processed through the Gender-Based Policy found in the Student Handbook. Referrals to the Office of Student Affairs will usually occur within three university business days from receipt of the Complaint. Complaints filed by students against anyone other than a student will proceed as set out in this procedure.
- 5.3.5. Administrative Action.** If administrative action is taken to address an employee's conduct prior to the commencement or completion of an investigation, the Affirmative Action Officer/Title IX Coordinator will make a determination as to whether to pursue the investigation or to administratively close the process.
- 5.3.6. Interim Measures.** The Affirmative Action Officer/Title IX Coordinator is authorized to notify appropriate administrators of the need to take immediate action, where such action appears necessary, to protect the interests of the Complainant or Respondent. Such actions may include any of the interim measures listed in 4.3 above.

5.4. Title IX Investigation

- 5.4.1. Notice.** If the preliminary review indicates that an investigation should be initiated, the Affirmative Action Officer/Title IX Coordinator will, at such time as is appropriate, notify the supervisor(s) of the Respondent about the investigation. The Affirmative Action Officer/Title IX Coordinator will also notify the Respondent(s) that the investigation has been initiated and that the Respondent will be provided with the opportunity to respond to the allegations.
- 5.4.2. Information and Resources.** Both Complainant and Respondent will be provided a copy of this Policy and information about available on and off campus resources, including but not limited to: victim advocacy, counseling/mental health services, health services, and explanation and assistance regarding reporting a crime to campus or local law enforcement.
- 5.4.3. Scope and Conduct of Investigation.** The scope of the investigation will be determined by the Affirmative Action Officer/Title IX Coordinator in his/her discretion and according to the charge and the facts. The Affirmative Action Officer/Title IX Coordinator may conduct the investigation directly, may enlist one or two others to assist him/her with the investigation, or may delegate to one

or more others the responsibility to conduct the investigation and prepare reports and recommendations for the Affirmative Action Officer/Title IX Coordinator; however, in any event the final decision reached will be that of the Affirmative Action Officer/Title IX Coordinator.

- 5.4.4. Timeframe.** Every effort will be made to complete the investigation within 30 calendar days of the filing or referral of the Complaint. However, the investigation period may be extended when deemed necessary by the Affirmative Action Officer/Title IX Coordinator (e.g., due to university holidays or breaks, based on availability of witnesses).
- 5.4.5. Cooperation.** The University expects members of the University community, including witnesses, to cooperate with an investigation. It is understood that there may be circumstances in which Complainants may wish to limit their participation, and a Complainant may choose to do so, although the University may be obligated to conduct an investigation. It is understood that Respondents may be advised not to provide information in circumstances that could prejudice their rights in external proceedings, and a Respondent may choose not to do so, although the University may be obligated to conduct an investigation. The University will not draw any adverse inferences from silence in such circumstances, but may impose interim measures, reach findings and implement remedies, as appropriate.
- 5.4.6. Retaliation.** If during the course of the investigation the Affirmative Action Officer/Title IX Coordinator becomes aware of any retaliation or interference in the investigation by the Complainant, Respondent, any witness or other person, the matter will be referred to Employee Relations, the appropriate supervisor, or, in the case of students, to the Office of Student Affairs.
- 5.4.7. Method of Investigation.** The method of investigation shall be within the discretion of the Affirmative Action Officer/Title IX Coordinator. However, the following requirements shall be observed:
- 5.4.7.1.** The decision shall be based solely upon the complaint and evidence received during the investigation. All evidence collected during the investigation shall be preserved. Oral evidence may be tape recorded or recorded by a court reporter, except for investigations involving SPA employees.
- 5.4.7.2.** When the Complainant is a student, both the Complainant and Respondent may be accompanied by one Support Person (as defined in 5.1.8) to provide support and assistance during meetings with the Investigator, so long as the individual does not interfere with the investigator's ability to conduct the investigation. A student Complainant may use a Trained Sexual Misconduct Advisor, as defined in the Student Gender-Based Policy, as a Support Person. When a student is not the Complainant or Respondent, no Support Person will be allowed.

- 5.4.7.3. The Complainant making the Complaint will be provided a reasonable opportunity to present his/her evidence supporting the Complaint in the form of documents or the spoken testimony of himself/herself or of others who may have evidence directly bearing on the facts alleged. As to any evidence collected during the investigation, the Investigator may ask questions or request additional information and may refuse to consider any evidence submitted which he/she concludes is repetitious, irrelevant, or otherwise without sufficient value to the investigation.
- 5.4.7.4. After receiving the initial evidence from the Complainant, the Investigator will interview the Respondent and any other persons who may have information relevant to the investigation. Multiple interviews may be conducted as may be necessary with the Complainant, the Respondent, or any other person to aid the Investigator in understanding the facts and issues related to the Complaint. Likewise, the Investigator may obtain any University record deemed necessary to the investigation (including confidential personnel or student records of past violations by Respondent), and may request from the participants or other sources any documents which will be of assistance.
- 5.4.7.5. After receiving evidence as provided in paragraphs 5.4.7.3 and 5.4.7.4 above, the Investigator will prepare a written Preliminary Report. This report will describe the factual findings and a summary of witness statements. The Preliminary Report will be shared promptly and equally with Complainant and Respondent, redacted if and to the extent required by and consistent with law.
- 5.4.7.6. Each party will have an opportunity to meet again with the Investigator, respond in writing, and request gathering of additional information by the Investigator. If additional information is gathered, it will become part of the record and shared with all parties, who again will have an opportunity to respond.
- 5.4.7.7. After considering such response to the Preliminary Report as the Complainant and Respondent may choose to make, the Investigator, if someone other than the Title IX Coordinator, will present the updated report to the Affirmative Action Officer/Title IX Coordinator for a final determination.
- 5.4.8. **Past Violations.** If, in the past, a Respondent was found to have violated this or a similar Policy, the information related to the past violation may be considered by the Investigator if:
- The previous violation was substantially similar to the present Complaint; and
 - The previous violation indicates a pattern of behavior and substantial conformity with that pattern by the Respondent.
- 5.4.9. **Sexual History.** In cases involving sexual misconduct, questioning about the Complainant's sexual history with anyone other than the Respondent will not be

permitted. The Complainant's past sexual history with Respondent is generally not considered in determining whether a policy violation occurred, unless:

- directly relevant to consent (although consent to one or more sexual acts does not constitute consent to another sexual act, and consent on one or more occasions does not constitute consent on a subsequent occasion) or,
- under very limited circumstances, to explain injury, to provide proof of a pattern or of repeated events, or for another specific question raised by an allegation.

The Investigator shall determine the relevance of evidence to the investigation and whether its relevance is outweighed by the dangers of unfair prejudice, confusion, trauma, or undue delay.

6. Title IX DETERMINATION

6.1. Evidentiary Standard. Once the investigation has concluded, the Affirmative Action Officer/Title IX Coordinator will evaluate the record as a whole (e.g., documents, interview notes) and inferences thereon, and apply a preponderance of evidence (more likely than not) standard to determine whether a policy violation is substantiated.

6.2. Final Report. The Affirmative Action Officer's written report will summarize the facts found as a result of the investigation and explain the basis for the decision that the Respondent has or has not violated the policy. The final report will be provided to the appropriate supervisor(s), with a copy provided to Office of Legal Affairs and retained in Employee Relations.

7. NOTIFICATION

7.1. Notification to Parties. The Affirmative Action Officer/Title IX Coordinator will notify the parties in writing of the outcome of the investigation and determination as to whether any policy violation was substantiated, but does not necessarily provide a copy of the report.

7.2. Confidential Information. The notification letters to the parties and the final report, with the evidence collected during the investigation, will be preserved and treated as confidential to the extent that they contain student information protected under federal privacy law (i.e. FERPA) or employee information protected under state law (i.e. SHRA), except as they may be used in subsequent proceedings. Violation of the confidentiality requirement by those involved in the complaint and/or investigation may result in disciplinary action for anyone disclosing such confidential information. Confidential student and employee information includes information that can identify persons who are Complainants, Respondents or witnesses.

8. CORRECTIVE ACTION

8.1. In cases where a policy violation is substantiated, the Affirmative Action Officer/Title IX Coordinator will meet with the appropriate supervisor(s) and others as needed (e.g.,

Office of Legal Affairs) to determine the appropriate corrective action to resolve the violation and prevent its recurrence, including:

- 8.1.1. possible sanctions against the Respondent and
- 8.1.2. remedies for the Complainant and the broader University community.

8.2. For violations of this policy by employees, sanctions may include, but not be limited to, counseling or training, written warning, financial penalty, unpaid leave of absence, suspension without pay, demotion or termination in accordance with the employment policies governing the specific employee.

In deciding the appropriate sanction, the supervisor may consider:

- the intent with which the Respondent acted,
- the nature and degree of harm caused by the Respondent's actions,
- other acts of harassment (if any) committed by the Respondent,
- the need for deterrence, and
- such other factors as reason and justice may require.

8.3. Remedies will be provided to the Complainant and greater university community as needed and will be dependent on the specific facts. Potential remedies include but are not limited to:

- providing comprehensive, holistic victim services including medical, counseling and academic support services for Complainant;
- ensuring the Complainant and Respondent do not share classes, work space/arrangements or extracurricular activities;
- providing appropriate academic adjustments, including remedies that were declined by the Complainant as interim measures;
- training or retraining employees and/or students;
- conducting bystander intervention and sexual violence prevention programs; and
- developing materials on sexual violence and distributing to the university community.

8.4. Complainant will be notified in writing of the corrective action taken to address the policy violation, however, Complainant is not authorized to access the confidential employment information contained in another employee's personnel file, unless as permitted by law. In cases of sexual misconduct involving violence, disclosure to the Complainant of the sanctions taken against the Respondent is required.

9. APPEAL

9.1. Applicable Appeals Procedures: The appeal process will be determined by the status of the Respondent. If a Respondent is in more than one status described in this Section 9 (e.g. a student and an employee), the appeal process to be used is that of the function in which the Respondent was acting at the time of the sexual misconduct, except that student employees are covered by the Student-on-Student Sexual Misconduct policy. Both parties, the Complainant and the Respondent, have equal rights to an impartial

appeal as outlined below. No other appeal or grievance process will be made available to address allegations under this Policy, regardless of the existence of other general grievance procedures.

9.2. Faculty Respondent

- 9.2.1. Faculty Respondents Found to Have Violated Policy, Resulting in an Intent to Discharge or to Impose a Serious Sanction:** If, based upon the Title IX investigation and/or other information, the Provost issues an intent to discharge or to impose a serious sanction against a faculty member, and if the faculty member requests a hearing, it will proceed pursuant to the provisions of the “Regulations on Academic Freedom, Tenure and Due Process.”
- 9.2.2. Faculty Respondents When Sanctions Do Not Result in a Serious Sanction:** If, based upon the Title IX investigation and/or other information, the Provost issues a sanction that does not constitute an intent to discharge or to impose a serious sanction, a faculty member may grieve a non-serious sanction by filing a grievance under the “Regulations on Faculty Grievance--Policy and Procedure.”
- 9.2.3. Appeal by Complainant:** If a Complainant disagrees with a decision to administratively close a Complaint (see 5.3.2 above) or disagrees with one or more conclusions of the Title IX report, the Complainant may file an appeal of that decision as if the appeal is subject to the “Regulations on Faculty Grievance--Policy and Procedure.” The appeal will be heard by the Faculty Grievance Committee under the procedures used for a faculty grievance hearing. If the Complainant disagrees with a decision by the Chancellor arising out of the Faculty Grievance Committee (“Regulations on Faculty Grievance--Policy and Procedure.”) or the Faculty Hearing and Reconsideration Committee (“Regulations on Academic Freedom, Tenure and Due Process”), the Complainant may file an appeal to the University’s Board of Trustees under the applicable policy listed above pertaining to the Committee that heard the matter and made a recommendation. The time limits for appeals set out in the applicable policy applies to appeals by the Complainant. The Board of Trustees’ decision is the final administrative appeal.

9.3. EPA Non-Faculty Respondent

- 9.3.1. EPA Non-Faculty Respondent Found to Have Violated Policy, Resulting in a Discharge or Suspension for Cause:** If, based upon the Title IX investigation and/or other related information, a supervisor imposes a discharge or suspension without pay for cause, and the EPA Non-Faculty Respondent requests a grievance hearing, it will proceed pursuant to the provisions of Section 4 of the “Employment Policies for EPA Non-Faculty.”
- 9.3.2. EPA Non-Faculty Respondent Found to Have Violated Policy, Resulting in a Sanction Other than Discharge or Suspension for Cause:** If, based upon the

Title IX investigation and/or other related information, a supervisor imposes a sanction that does not include a discharge or suspension without pay for cause, an EPA Non-Faculty Respondent may appeal by filing a grievance under Section 5 of the “Employment Policies for EPA Non-Faculty.”

- 9.3.3. Appeal by Complainant:** If a Complainant disagrees with a decision to administratively close a Complaint (see 5.3.2 above) or disagrees with one or more conclusions of the Title IX report, the Complainant may file an appeal of that decision as if the appeal is subject to Section 5 of the “Employment Policies for EPA Non-Faculty.” The appeal will be heard by the EPA Non-faculty Grievance Committee under the procedures used for a non-faculty grievance hearing. If the Complainant disagrees with a decision by the Chancellor arising out of the EPA Non-faculty Grievance Committee, the Complainant may file an appeal to the University’s Board of Trustees under the “Employment Policies for EPA Non-Faculty.” The time limit for filing an appeal applies to an appeal by the Complainant. The Board of Trustees’ decision is the final administrative appeal.

9.4. SPA Employee Respondent

- 9.4.1. SPA Complainant:** An SPA Complainant may proceed through the current “SPA Employee Grievance Policy.”
- 9.4.2. SPA Respondent Found to Have Violated Policy:** Corrective or disciplinary action against an SPA employee will be in accordance with “SPA Disciplinary Action Policy,” including any rights to an appeal, and/or the current “SPA Employee Grievance Policy,” as applicable.
- 9.4.3. Appeal by Complainant:** If a Complainant disagrees with a decision to administratively close a Complaint or disagrees with one or more conclusions of the Title IX report, the Complainant may appeal that decision by filing an internal grievance as done under “SPA Employee Grievance Policy.” The appeal will be heard by the internal SPA Hearing Panel under the procedures used for an SPA grievance hearing. If an SPA Complainant disagrees with a decision by the Chancellor arising out of the SPA Hearing Panel, the Complainant may file an appeal pursuant to the “SPA Employee Grievance Policy” and must meet the time to appeal and other requirements of that policy. If a non-SPA Complainant disagrees with a decision by the Chancellor arising out of the SPA Hearing Panel, the Complainant may file an appeal to the University’s Board of Trustees within 30 calendar days from receipt of the Chancellor’s decision. The Board of Trustees’ decision is the final administrative appeal.

9.5. Student Respondent

- 9.5.1. Student Respondent:** Complaints by students against students are processed through the procedures for sexual misconduct found in the Student Handbook, especially “Student-on-Student Sexual Misconduct.”

9.5.2. Appeal by Student Complainant: If a student Complainant disagrees with a decision to administratively close a Complaint (see 5.3.2 above) or disagrees with one or more conclusions of the Title IX report, the Complainant may appeal that decision by filing a complaint for sexual misconduct pursuant to the Student Handbook. The Complaint will be heard and decided under the procedures used for student sexual misconduct hearings. If the Complainant disagrees with a decision arising out of a student sexual misconduct complaint, the Complainant may file an appeal pursuant to the Student Handbook to the same people for the same reasons as a Respondent can appeal. The time limit for filing an appeal applies to an appeal by the Complainant. After an appeal to the Chancellor, a decision by the Board of Trustees is the final administrative appeal, if an appeal to either or both is allowed.

9.6. All other Respondents: A Complaint against any other type of Respondent, a third party such as a volunteer or contractor, shall be made to EPA Non-faculty Grievance Committee. An appeal by a Complainant from a decision will be handled pursuant to Section 9.3.3. above.

9.7. Hearing Panels. All appeals will be heard by a hearing panel determined based on the employment status of the Respondent.

9.8. Qualifications of Hearing Panelists: Each person selected to serve on a hearing panel shall be impartial and unbiased. Each will disclose any real or reasonably perceived conflicts of interest or recuse themselves in a particular case, as appropriate. All panelists shall be trained in handling sexual misconduct complaints and in the conduct of hearings.

10. INFORMAL RESOLUTION

10.1. At any time after submission of a Complaint to the Affirmative Action Officer/Title IX Coordinator, a Complaint may be resolved through an informal process provided that: (1) the Complainant(s) and Respondent(s) mutually and voluntarily agree to the terms and conditions of any proposed resolution agreement, and (2) the Affirmative Action Officer/Title IX Coordinator approves the proposed resolution agreement.

10.2. At any time after submission of the Complaint, either party or the Affirmative Action Officer/Title IX Coordinator may suggest a confidential, non-binding mediation of the dispute. Both parties must agree to participate in the mediation and agree to the resolution that arises from the mediation. In addition, the Affirmative Action Officer/Title IX Coordinator must approve the proposed resolution agreement. Mediation is not an option for resolution of allegations of sexual harassment that involve sexual violence.

11. REPEAL OF OTHER POLICIES

This policy repeals “Section III - Equal Employment Opportunity 2.0 - Sexual Harassment” and

Faculty Handbook "Appendix C-6 -- Sexual Harassment Policy."

Approved by the Chancellor:

Date Policy is Effective: upon approval and applies to all matters first reported thereafter

First approved: July 13, 2015