|  |  |
| --- | --- |
|  | **NORTH CAROLINA A&T STATE UNIVERSITY**  ***TITLE IX INVESTIGATION PROCESS***  **Supplement B to University Policy 207, Sexual Harassment, Discrimination, and Misconduct** |

**Investigatory and Disciplinary Procedures**

The University may remove a Respondent from its education programs or activities if an individualized safety and risk assessment determines that an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of prohibited conduct justifies removal. The Respondent shall be given an opportunity to challenge the decision immediately following removal.

**Initial Review of a Complaint**

Upon receipt of a formal or informal complaint, the Title IX Coordinator will review the initially available facts as alleged to determine if sufficient information exists in the complaint to believe that prohibited conduct set forth in this policy occurred, the location where the alleged incident took place (to determine if it falls within the jurisdiction of the Title IX Office) and if immediate action is needed to ensure safety.

After initial review of the complaint, the Title IX Coordinator will:

1. Address the immediate physical safety and emotional well-being of the Complainant and Respondent;
2. Inform the parties of the right to contact or decline to contact law enforcement if the conduct is criminal in nature;
3. Assist with notifying law enforcement if requested;
4. Notify the parties of their right to have an advisor of their choice appointed by the University;
5. Notify the parties of the availability of medical services to address physical or mental health concerns, and to preserve evidence;
6. Notify the parties of the importance of preserving evidence;
7. Provide the parties with information about on and off-campus resources;
8. Provide information about the availability and procedures for requesting interim or supportive measures;
9. Provide notice to the parties of the procedural options regarding this matter;
10. Discuss the Complainant’s expressed preference for manner of resolution and any barriers to proceeding; and
11. Provide written notice and explain the University’s policy prohibiting retaliation.

Although there is no requirement to do so, the Title IX Office may investigate informal complaints when allegations implicate both Title IX prohibited conduct and other conduct that may violate University policies or codes of conduct.

When the initially available facts as alleged in a complaint are sufficient to believe that a violation under this policy occurred, the Title IX Office will ensure that formal complaints of prohibited conduct are investigated in a fair and impartial manner. A formal complaint must be signed by a Complainant or the Title IX Coordinator and request that the University investigate an allegation of prohibited conduct.

**Notice to the Parties after Initial Review**

The Title IX Coordinator will provide the parties with written notice of how the matter will proceed after completing the initial review. The notice shall contain:

1. Allegations (with relevant details) of the prohibited conduct;
2. A statement that the Respondent is not responsible for the alleged conduct unless a determination is made at the conclusion of the grievance process;
3. Whether an investigation will be conducted by the Title IX Investigator;
4. Information about the applicable University grievance process;
5. A statement that each party may have an advisor of choice during the investigation, that the advisor may be an attorney, and that the advisor may accompany the party to any meeting or hearing;
6. A statement that each party has a right to inspect and review evidence;
7. A statement and specific reference to any provision in the University’s codes of conduct or policies that prohibit knowingly making false statements or submitting false information during the grievance; and
8. Notice that each party has the right to discuss the allegations being investigated, and to gather and present evidence relevant to the allegations.

**Investigation**

Formal complaints that allege sufficient facts to believe that prohibited conduct may have occurred shall be assigned to a trained Title IX Investigator for investigation.

The purpose of an investigation is to explore the details of the allegations in the complaint, conduct witness interviews, gather and examine the evidence in depth to determine what occurred. Evidence includes witness names and statements, documents, text messages, recordings, and social media posts. The burden of gathering evidence and proving allegations of prohibited conduct shall be on the University throughout the investigatory and grievance process.

The Complainant and Respondent are not required to disclose medical and counseling records during an investigation. However, they may contain relevant and material information, and a party is permitted to disclose the records voluntarily.

Any records provided by a party become part of the file and are available to be reviewed by the opposing party.

The Title IX Office will make every effort to conduct and complete its investigation in a prompt and equitable manner. The amount of time it may take to complete an investigation will depend upon the nature and complexity of the allegations, witness accessibility and cooperation, and procedural due process requirements. The Complainant and Respondent will be advised of any delays that occur during the process and the reasons for delay.

**Final Investigation Report**

The Title IX Investigator shall draft a report at the completion of the investigation. The draft report shall contain at a minimum: details of the allegations in the complaint; summary of witness statements; identification of relevant evidence examined; and inconsistencies in parties’ or witness statements, and a statement about whether the evidence tends to show that a policy violation may have occurred.

The Title IX Investigator shall transmit a copy of the draft report and relevant evidence to the parties with notice that they may: inspect the evidence submitted; meet with the Title IX Investigator and/or submit additional information, including a response, witness names, statements, and other evidence to the Investigator; submit specific questions, if any, that they want the Title IX Investigator to pose to witnesses; submit any response or additional information to the Title IX Investigator within ten (10) business days from the date that the Title IX Investigator transmits the draft report.

If neither party identifies additional investigative steps that the Investigator determines to be relevant and necessary, or that the Title IX Investigator identifies, the Title IX Investigator shall prepare a Final Investigation Report.

If the Complainant or Respondent provides additional information for investigation that the Investigator determines is necessary and relevant, the Investigator shall continue the investigation. Upon conclusion of any additional investigation, the Investigator shall consider any additional comments, questions, and/or information submitted by the parties during the designated review and response period and prepare a Final Investigative Report.

The Final Investigation Report will include, subject to confidentiality protections provided by law,

details of the allegations in the complaint; summary of witness statements; identification of relevant evidence examined; inconsistencies in parties’ or witness statements; and a statement about whether the evidence tends to show that a policy violation may have occurred.

The Title IX Coordinator shall review the Final Investigative Report for compliance with the required content, and direct amendment to satisfy the content requirements to the Title IX Investigator if appropriate. After confirming that the Final Investigative Report contains the required information, or an explanation of any omissions, the Title IX Coordinator shall forward the Final Investigative Report to the appropriate office for adjudication. The Title IX Coordinator shall provide: written notice to each party and their advisor that the investigation has concluded; the office to which the Final Investigative Report was transmitted; a copy of the Final Investigative Report at least 10 days before any hearing, and the applicable adjudicatory process.

**Dismissal of Title IX Complaint**

If the Title IX Coordinator determines that the initially available facts as alleged would not violate this policy, even if true, the Title IX Coordinator shall dismiss the Title IX complaint. Prohibited conduct would not violate this policy if:

1. The conduct did not occur in the University’s education program or activity;
2. The conduct did not occur against a person in the United States;
3. If the conduct is not sexual or discriminatory in nature as set forth in this policy.

Prohibited conduct that does not violate this policy may violate another code of conduct or policy. In those cases, the matter will be referred to the appropriate University office for action. The Complainant and Respondent will be given written notice, including the office to which the matter was referred.

**Hearings**

The University bears the burden of producing evidence to show that an accused is responsible for the prohibited conduct alleged. Allegations must be proven by a preponderance of the evidence.

Hearings conducted pursuant to this policy must be live. Live hearings may be conducted with all parties physically present in the same geographic location, or may be conducted virtually.

The University must create an audio or audiovisual recording, or transcript, of any hearing and make it available to the parties for inspection and review.

Parties and/or their advisors at a hearing have the right to:

1. Be heard by an unbiased decision-maker;
2. Make an opening statement;
3. Present relevant and material evidence as determined by the decision-maker;
4. An explanation from the decision-maker as to any questions excluded as irrelevant;
5. Call witnesses to testify as permitted by the decision-maker;
6. Ask questions to develop the record as to the relevant facts, circumstances, and issues; and
7. Make a closing argument.

The decision-maker will allow each party’s advisor to conduct direct examination and cross examination, and ask the other party and witnesses relevant questions.

If a party does not have an advisor present at the hearing, the University will provide an advisor, free of charge, to conduct direct and/or cross-examination on the party’s behalf.

**Adjudication**

Adjudication of any determination of responsibility shall be determined in accordance with the applicable disciplinary and grievance process. Determinations of responsibility must be in writing, transmitted to the parties simultaneously, and contain:

1. Identification of the allegations potentially constituting sexual harassment or prohibited conduct;
2. Procedural history from receipt of the formal complaint to determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the applicable policies or code of conduct to the facts;
5. A statement of, and rationale for the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent;
6. Statement regarding whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided to the Complainant by the University; and
7. Appeal rights, including permissible grounds for appeal, and appeal procedures.

**Applicable Disciplinary and Grievance Process**

If the Respondent is a student, the matter will be adjudicated in accordance with the applicable university grievance process and contained in the Student Handbook and/or Graduate Student Handbook. When the Respondent is both a full-time student and less than full-time employee, the applicable university policies and Student Code of Conduct will apply.

If the Respondent is an employee subject to the State Human Resources Act (SHRA), the matter will be adjudicated in accordance with the applicable university SHRA disciplinary and grievance process. When the Respondent is both a full-time SHRA employee and less than full-time student, the applicable university policies and SHRA disciplinary policies and grievance process will apply.

If the Respondent is a non-faculty employee exempt from the State Human Resources Act (EHRA), the matter will be adjudicated in accordance with the applicable university and EHRA non-faculty employee disciplinary and grievance process. When the Respondent is both a full-time EHRA non-faculty employee and less than full-time student, the applicable university policies and EHRA disciplinary and grievance process will apply.

If the Respondent is a faculty member, the applicable university policies and faculty disciplinary and grievance process will apply.

If there is a question as to the Respondent’s relationship with the University, the University’s Title IX Coordinator, in consultation with other members of management, will determine the Respondent’s relationship. After doing so, the applicable university and disciplinary process will apply as determined by the University.