

REG 04.25.02 – Discrimination, Harassment and Retaliation Complaint Procedures

Authority: Issued by the Chancellor. Changes or exceptions to administrative regulations issued by the Chancellor may only be made by the Chancellor.

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Related Policies:

[**NCSU POL04.25.05 – Equal Opportunity and Non-Discrimination Policy**](#)

[**NCSU POL05.25.01 – Faculty Grievance and Non-Reappointment Review Policy**](#)

[**NCSU POL11.35.01 – Student Conduct**](#)

[**NCSU POL05.25.03 – Review and Appeal Processes for EHRA Non-Faculty Employees**](#)

[**NCSU REG04.25.08 – Title IX Sexual Harassment Complaint Resolution Procedures**](#)

[**NCSU REG11.35.02 – Student Discipline Procedures**](#)

[**NCSU REG11.35.04 – Written Student Complaint**](#)

[**NCSU REG11.35.05 – Code of Student Conduct**](#)

[**NCSU REG04.25.06 – Discrimination and Harassment Prevention and Response Training**](#)

[**UNC System SHRA Employee Grievance Policy**](#)

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1. INTRODUCTION

This regulation serves as a companion to **NCSU POL 04.25.05** – Equal Opportunity and Nondiscrimination Policy (“Nondiscrimination Policy”) to outline the specific procedures at North Carolina State University (“NC State” or the “University”) for reporting and responding to Complaints of Discrimination and Harassment and any related Retaliation.

Title IX of the Education Amendments of 1972 (“Title IX”) requires institutions of higher education to implement a Title IX policy to address sexual harassment as specifically defined by the U.S. Department of Education. Accordingly, Complaints that an individual may have engaged in sexual harassment as specifically defined by the Title IX federal regulations are subject to review in accordance with the University’s **REG 04.25.08** – Title IX Sexual Harassment Resolution Procedures (“Title IX Sexual Harassment Procedures”). Notably, reported misconduct that does not constitute Title IX Sexual Harassment may still be prohibited and does not preclude the University from evaluating the reported misconduct under the provisions of this regulation.

2. DEFINITIONS

2.1 "Complainant" means a person to whom the alleged Discrimination, Harassment, or Retaliation was directed.

2.2 "Complaint" means a report or disclosure of information to the OEO that includes allegations that may be covered by the Nondiscrimination Policy.

2.3 "Complaint Resolution Process" means NC State's procedures for resolving Complaints of Discrimination, Harassment, or Retaliation and includes the filing of a Complaint, preliminary review of the Complaint, investigation, and appeals, if any.

2.4 "Consent" with respect to assessing whether activity between individuals is voluntary means an affirmative decision to engage in such activity given by clear action or words. It is an informed decision made freely, willingly, and actively by all parties. Behavior will be considered "without consent" if no clear consent, verbal or nonverbal, is given. Consent cannot be procured by physical force, threats, intimidating behavior, or coercion. Prior consensual conduct between the Parties does not itself demonstrate or imply consent to current or future acts. A person cannot give consent if they are incapacitated as a result of alcohol or drug consumption (voluntary or otherwise), unconscious, unaware or asleep during the act, under the legal age to provide consent, or otherwise lack the capacity to consent. In determining whether a person is incapacitated, the analysis must include whether the Respondent knew or should reasonably have known that the person was incapacitated. Neither silence nor a lack of protest or resistance is a valid form of consent. Consent can be revoked or withdrawn at any time, even during a sexual act. If consent is withdrawn, the act is no longer consensual.

2.5 "Day" means calendar days. If the day to take an action lands on a Saturday, Sunday, or day that the University is closed (such as a holiday), the deadline shall fall on the next business day.

2.6 "Discrimination" is the differential treatment of a person because of a person's Protected Status which denies, limits, or adversely impacts a term or condition of a person's employment, education, or their participation in University programs or activities.

2.7 "Harassment" is a form of Discrimination that consists of unwelcome conduct due to a person's Protected Status^[1] that creates a situation:

- i. where enduring the offensive conduct becomes a condition of employment or of participation in a Program or Activity, or
- ii. that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it changes an employee's terms and conditions of employment or limits or denies a person's ability to participate in or benefit from a Program or Activity. Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
 - a. The degree to which the conduct affected a person's ability to access a Program or Activity;
 - b. The type, frequency, and duration of the conduct;
 - c. The Parties' ages, roles within a Program or Activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;

- d. The location of the conduct and the context in which the conduct occurred; and
- e. Other harassment in the University's Program or Activity.

2.8 "Office of Equal Opportunity" or "OEO" is the office on campus responsible for investigating allegations of Discrimination, Harassment, or Retaliation. The OEO is located at 231 Winslow Hall, 40 Pullen Drive, Raleigh NC 27607 and has a mailing address of Campus Box 7530, NC State University, Raleigh, NC 27695-7530.

2.9 "Party" and "Parties" are individual and collective terms used to describe Complainant(s) and Respondent(s) in a Complaint of Discrimination, Harassment, or Retaliation.

2.10 "Policy Violation" means a violation of the Nondiscrimination Policy.

2.11 "Program or Activity" means the operations of NC State, including but not limited to academic, extracurricular, research, occupational training, employment, or similar functions.

2.12 "Protected Activity" includes making a Complaint; participating as a Witness or Party in an investigation, proceeding, or hearing involving an alleged violation of the Nondiscrimination Policy; or requesting a reasonable accommodation or modification^[2] based on disability, religion, or pregnancy or related condition.

2.13 "Protected Status" is defined in Section 2 of the Nondiscrimination Policy.

2.14 "Respondent" means a person who has been reported to have engaged in conduct that could constitute Discrimination, Harassment, or Retaliation.

2.15 "Retaliation" is any adverse action (including but not limited to intimidation, threats, or coercion relating to an adverse action) against a person because that person engaged in a Protected Activity.^[3]

2.16 "Sexual Harassment" is a form of Harassment which is based on a person's sex or is of a sexual nature. Sexual Harassment can include unwelcome sexual advances, requests for sexual favors, sexual exploitation, and other verbal, non-verbal or physical harassment of a sexual nature. Allegations of sexual harassment as defined under Title IX are addressed in the Title IX Sexual Harassment Procedures.

2.17 "Title IX Sexual Harassment" is defined in the Title IX Sexual Harassment Procedures.

2.18 "Grievance Procedure" for purposes of this regulation includes NCSU POL 05.25.01 (Faculty Grievance and Non-Reappointment Review Policy), NCSU POL 05.25.03 (Review and Appeal Processes for EHRA Non-Faculty Employees), and the [SHRA Employee Grievance Policy](#).

2.19 "Vice Provost for Equal Opportunity" or their designee, coordinates equal opportunity compliance under the Nondiscrimination Policy and serves as the ADA Coordinator, Title VI Coordinator, and Title IX Coordinator.

2.20 “Witness” is a person identified by a Party, the University, or through information otherwise gathered as part of a Complaint Resolution Process who may possess information or evidence relevant to allegations of a violation of the Nondiscrimination Policy. Witnesses may be invited to participate in interviews and/or proceedings in association with a Complaint Resolution Process. A Witness may not serve in another role (such as an advisor or support person) during the Complaint Resolution Process in which they are already serving as a Witness.

3. UNIVERSITY’S RESPONSE TO DISCRIMINATION, HARASSMENT, OR RETALIATION

3.1 When the University becomes aware of potential Discrimination, Harassment, or Retaliation, the University will follow the applicable complaint resolution procedures.

3.2 For allegations of Title IX Sexual Harassment and any related Retaliation, the University will follow the Title IX Sexual Harassment Procedures.

3.3 For allegations of Discrimination, Harassment, and any related Retaliation, the University will follow the Complaint Resolution Process in this Regulation and will:

- a. treat Complainants and Respondents equitably;
- b. presume that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Discrimination, Harassment, or Retaliation Complaint Resolution Process;
- c. use the preponderance of evidence (“more likely than not”) standard to determine whether there is a violation of the Nondiscrimination Policy;
- d. provide an objective evaluation of relevant evidence and not base any credibility decisions on a person’s status as a Complainant or Respondent;
- e. not consider the Complainant’s past sexual history in determining whether a Policy Violation involving allegations of harassment based on sex occurred.

3.4 The University may investigate allegations of Discrimination, Harassment or Retaliation that are likely to have a substantial adverse effect on, or pose a risk of harm to, NC State or any member of the University community even when, for example:

- a. an individual shares a concern involving possible Discrimination, Harassment, or Retaliation, but does not wish to file a Complaint;
- b. an individual reports a concern involving possible Discrimination, Harassment, or Retaliation and asks that either their identity or the information provided be kept confidential; or
- c. an individual anonymously reports possible Discrimination, Harassment, or Retaliation and the Complaint includes sufficient specificity to allow the University to investigate the report.

3.5 If it is determined that the Respondent was not participating or attempting to participate in a University Program or Activity at the time of the alleged conduct, the University will assess and implement supportive

measures for the Complainant and evaluate means to address any hostile environment that may have been caused, as appropriate.

4. CONFIDENTIALITY

4.1 The University will not disclose personally identifiable information obtained through the Complaint Resolution Process, except to carry out the purposes of those procedures and/or as required or allowed by law, and the University will take reasonable steps to protect the privacy of the Parties and Witnesses during the pendency of the Complaint Resolution Process.

4.2 Individuals who seek additional confidentiality are strongly encouraged to consult with individuals who, by law or University designation, are confidential resources, such as mental health counselors, physicians, clergy, University ombuds, or private attorneys.

5. REPORTING AND RESPONDING TO DISCRIMINATION, HARASSMENT, AND/OR RETALIATION

5.1 Any person may make a Complaint at any time, including during non-business hours, regarding Discrimination, Harassment, or Retaliation (whether or not the person reporting is the person impacted by the alleged conduct) through any of the following means:

- a. In person by speaking to the Vice Provost for Equal Opportunity, or to any of the EOE investigators (whose offices are located in the OEO);
- b. By delivering, mailing, or otherwise transmitting a Complaint to the OEO;
- c. By calling the OEO at (919) 513-0574;
- d. By emailing the Complaint to equalopportunity@ncsu.edu;
- e. By completing the OEO online **Discrimination, Harassment, and Retaliation Report Form**; or
- f. Through any other means that results in the Vice Provost for Equal Opportunity receiving the person's verbal or written Complaint.

5.2 To the extent possible, Complaints of Discrimination, Harassment, and Retaliation should be submitted within 180 days of the alleged action that forms the basis of the Complaint. Allegations of Discrimination, Harassment, or Retaliation that are submitted after 180 days when reported to the OEO will be reviewed, investigated as appropriate, and addressed through corrective action (if applicable).

5.3 Anonymous Complaints may be submitted to the OEO; however, NC State's ability to respond or take further action from an anonymous Complaint may be impacted by the level of information available about the incident or the individuals involved.

5.4 Upon receiving a Complaint containing allegations of Discrimination, Harassment, or Retaliation, the OEO will promptly reach out to the Complainant to provide resources and explain the Complaint Resolution Process.

5.5 Allegations of Discrimination, Harassment, or Retaliation not previously filed directly with the OEO that are filed pursuant to a Grievance Procedure or a written student complaint under **REG 11.35.04 – Written Student Complaints** will be referred to the OEO as a Complaint for processing. In

order to expedite the OEO's formal processing of the Complaint, the referral should occur as soon as possible after the grievance or written student complaint is filed.

5.6 The submission of a Complaint to the OEO pursuant to this procedure does not preclude an individual from filing an external charge of discrimination, harassment, or retaliation directly with the Equal Employment Opportunity Commission (EEOC), the Office of Administrative Hearings-Civil Rights Division (OAH-CRD), the U.S. Department of Education, Office for Civil Rights (OCR), or other relevant agency, nor does it prevent an individual from pursuing a related civil action or criminal charge.

5.7 In appropriate circumstances, NC State may place an employee on administrative leave with pay (for EHRA employees) or investigatory placement with pay (for SHRA employees) or may place a student on interim suspension during the Complaint Resolution Process.

6. PRELIMINARY REVIEW

6.1 Once a Complaint has been submitted to the OEO, an investigator will conduct a preliminary review of the Complaint to determine whether the Complaint alleges facts that, if true, would constitute a violation of the Nondiscrimination Policy.

6.2 When a preliminary review of a Complaint indicates that the allegations, if true, might constitute a Policy Violation, the OEO will initiate an investigation of the allegations.

6.3 When the preliminary review of the Complaint indicates the allegations within the Complaint would not constitute a Policy Violation, the investigator will administratively close out the process and will notify the Complainant in writing of this determination.

6.4 For employee cases, the OEO may consult with an employee's supervisor to address allegations of inappropriate conduct in a Complaint, even when the allegations do not rise to the level of a Policy Violation.

7. FACILITATED RESOLUTION

7.1 At any time after filing a Complaint to the OEO, a Complaint may be resolved through a facilitated resolution provided that: (1) the Complainant(s) and Respondent(s) mutually agree to the facilitated resolution and (2) the University agrees that the facilitated resolution would be appropriate to resolve the Complaint.

7.2 A facilitated resolution is an informal process resulting in an informed voluntary agreement between the Parties and NC State to resolve a Complaint utilizing strategies such as educational interventions or other restorative principles to address the concern, prevent its recurrence, and/or restore the community. The facilitated resolution process allows the parties an opportunity to resolve the issue and is intended to be educational in nature.

7.3 Facilitated Resolutions generally should not exceed sixty (60) days from the case's referral from the OEO to the facilitator.

8. INVESTIGATIVE PROCESS

8.1 If the preliminary review indicates that Policy Violation may have occurred, OEO will perform an investigation of the conduct alleged. OEO will notify the Parties of the investigator who has been assigned to complete the investigation. Upon receipt of the notice, either Party must notify the Vice Provost for Equal Opportunity in writing within five (5) days of the delivery of notice if they believe the investigator assigned to the investigation has a conflict of interest or bias such that the investigator could not conduct a fair investigation. The Vice Provost for Equal Opportunity shall have the discretion to remove or re-appoint an investigator if deemed necessary to address a reported conflict of interest or bias.

8.2 OEO will also notify the Respondent(s) of the alleged conduct and policies at issue and will provide the Respondent(s) with the opportunity to respond to the allegations and to provide exculpatory evidence and Witnesses. For employees, at such time as is appropriate, OEO will also notify the supervisor(s) of the Respondent(s) about the investigation.

8.3 OEO will provide written notice of the date, time, location, participants and purpose of any investigative interview or meeting to a Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate.

8.4 OEO will complete the investigation in a reasonably prompt timeframe; however, some investigations may take longer, due to the complexity of the issues, the University calendar (including breaks, holidays, or other closures), the unavailability of Parties or Witnesses, inclement weather, and/or other unforeseen circumstances.

8.5 If a Complainant fails to respond to the OEO's requests to provide information regarding the Complaint or fails otherwise to participate in the investigation, the OEO may administratively close the formal resolution process.

8.6 The OEO will provide each Party an opportunity to review a written summary of the other Party's investigation interview and/or any written statement that a Party has submitted regarding the allegations in the Complaint, as well as a written summary of Witness interviews. Each Party will be provided with an opportunity to submit to the investigator proposed questions to the other Party or a Witness concerning their statements to the investigator. The investigator will review the proposed questions and pose all relevant questions to the other Party or Witness. The investigator will exclude any irrelevant questions, and when excluded, the investigator will provide to the Party who submitted the question an explanation for the decision to exclude the question as not relevant. Irrelevant questions include, but are not limited to, the following categories, which are deemed "irrelevant" at all stages of the formal resolution process:

- a. With regard to Complaints of sexual harassment or sexual misconduct, questions about the Complainant's sexual predisposition or prior sexual behavior, unless they are offered to prove that someone other than the Respondent committed the alleged conduct or they concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent; and
- b. Questions that constitute or seek disclosure of information protected under a legally-recognized privilege.

8.7 The investigator may, depending on the questions and answers provided by the Parties, solicit follow-up questions from the Parties.

8.8 The OEO will prepare a draft investigative report that summarizes the relevant evidence and policies at issue. Prior to the investigative report being finalized, a draft will be made available to each Party for their review and written response. Each Party will have ten (10) days from receipt of the draft to submit comments on the report or other relevant evidence.

8.9 Following each Party's opportunity to review the draft investigative report, the OEO will analyze the information collected during the investigation and finalize the investigative report.

9. DETERMINATIONS

9.1 For student Respondent cases, at the conclusion of the investigation, the OEO will provide the Office of Student Conduct with a copy of the final investigative report for review and consideration of any appropriate charges for violations of the Code of Student Conduct (see REG 11.35.05). If charges are issued, the matter will be resolved utilizing the procedures described in the [Student Discipline Procedures \(REG 11.35.02\)](#).

9.2 For employee Respondent cases, the investigator will analyze the facts and policies at issue and make a determination of whether a Policy Violation is substantiated. The following process will apply in employee Respondent cases:

- a. In reaching its determination, the investigator will apply a preponderance of evidence standard (i.e., whether the information presented has shown that it is "more likely than not" that the Respondent engaged in the alleged conduct and therefore violated the Nondiscrimination Policy).
- b. The OEO will notify the Parties in writing of the outcome of the investigation and determination as to whether any Policy Violation was substantiated. If the OEO determines there has been no Policy Violation, the notification to the Parties concludes the investigation process. The determination letter will also include the Parties' appeal rights. If the Complaint was referred to the OEO through a University Grievance Procedure, the OEO will notify the appropriate entity that the investigation process has concluded.
- c. The investigator's determination will be included in an investigative report, which will be provided to the appropriate supervisor(s) and Employee Relations.

10. CORRECTIVE ACTION FOR EMPLOYEE RESPONDENTS

10.1 When a Policy Violation has been substantiated, the Vice Provost for Equal Opportunity will confer with the Respondent's supervisor, or designee, Human Resources, Employee Relations, and other campus partners, as appropriate, to discuss corrective action to address the misconduct and prevent its recurrence.

10.2 Corrective action may or may not include formal disciplinary action (i.e., dismissal/discharge, suspension, or demotion).

11. APPEALS FOR EMPLOYEE RESPONDENTS

11.1 The Parties shall be notified in writing of their appeal rights when provided with the investigator's written decision. Either Party may appeal an investigator's determination regarding responsibility based on one or more of the following grounds:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time the investigator's written decision was made, that could affect the outcome of the matter; and
- c. The investigator(s) or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent that affected the outcome of the matter.

11.2 Any appeal must be submitted within ten (10) days from the date that the investigator's written decision is issued to the Parties through any delivery method where receipt can be verified. The time limit for filing an appeal begins upon delivery of the written decision to the Parties, respectively. If no timely appeal is filed, the investigator's written decision will be final. An extension of time to file an appeal may be requested in writing within the ten-day limit, and it is within the discretion of the Vice Provost for Equal Opportunity, or designee, to grant or deny such requests.

11.3 The appeal should be directed to the Vice Provost for Equal Opportunity or designee, who will notify the other Party in writing when an appeal has been filed. The appeal must contain the following:

- a. A copy of the decision being appealed;
- b. A detailed written statement specifying the grounds for appeal, a list of alleged errors in the decision or procedure, an explanation for why those decisions are in error, and the complete factual basis for the appeal;
- c. A requested remedy; and
- d. The signature of the appellant and date the appeal was submitted.

11.4 The other Party shall have ten (10) days from their receipt of the notification of appeal to provide a written response to the appeal.

11.5 Upon receipt of an appeal and any written response to the appeal, the Vice Provost for Equal Opportunity shall appoint an Appeal Officer to review the appeal. The Appeal Officer may be a University employee or external third party at the discretion of the Vice Provost for Equal Opportunity. The Vice Provost for Equal Opportunity will send a notice to the Parties identifying the Appeal Officer. The Party must notify the Vice Provost for Equal Opportunity within five (5) days if they believe the Appeal Officer assigned to the case has a conflict of interest or bias such that the Appeal Officer could not conduct a fair review of the appeal. The Vice Provost for Equal Opportunity shall have the discretion to remove or re-appoint an Appeal Officer if deemed necessary to address a reported conflict of interest or bias.

11.6 The Vice Provost for Equal Opportunity or designee will provide the documents submitted by the Parties on appeal to the Appeal Officer. Appeals will be decided on the record of the investigation. The Appeal Officer will not conduct a new investigation. However, the Appeal Officer

may request the non-appealing Party to submit a written statement of their position on appeal. The written statement becomes part of the appeal record.

11.7 The Appeal Officer will review the appeal documentation and any other information required to render a decision on the appeal. The Appeal Officer will issue a written decision on the appeal within fifteen (15) days of receipt of all documentation required to decide the appeal, but that deadline may be extended for good cause. The decision on appeal will be provided simultaneously to both Parties.

11.8 The Appeal Officer's decision on appeal may:

- a. Affirm the investigation findings;
- b. Remand the case to the investigator based on:
- c. Procedural errors that affected the outcome of the investigation; or
- d. New and significant material information that has become available and was not available previously to a person exercising reasonable diligence, which information could have affected the outcome of the proceeding; or
- e. Remand the case to a new investigator if the Appeal Officer finds that the investigator had a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent that affected the outcome of the matter.

12. RETALIATION

If, during the course of the Complaint Resolution Process, the OEO receives a Complaint of Retaliation, the OEO will review the allegations of Retaliation and may determine that it is appropriate to investigate the allegations as part of the pending Complaint Resolution Process or initiate a new Complaint Resolution Process. Substantiated allegations of Retaliation are subject to corrective action in accordance with Section 10 of this regulation.

13. RELATIONSHIP TO OTHER NON-DISCRIMINATION LAWS AND POLICIES

13.1 This Regulation addresses NC State's process to respond to allegations of Discrimination, Harassment, and any related Retaliation. The Title IX Sexual Harassment Procedures separately address NC State's process to respond to Title IX Sexual Harassment.

13.2 Allegations of conduct that do not fall within the definition of Discrimination, Harassment, or Retaliation may be covered by provisions contained in other university policies or regulations.

13.3 Nothing in this regulation is intended to (a) restrict any rights that would otherwise be protected from government action by the First Amendment of the United States Constitution; or (b) deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the United States Constitution; or (c) restrict any other rights guaranteed against government action by the United States Constitution.

[1] Complaints that an individual may have engaged in Title IX Sexual Harassment are subject to review in accordance with the University's Title IX Sexual Harassment Procedures rather than under this regulation.

[2] Individuals seeking accommodations related to pregnancy or related conditions may be covered by the Title IX Sexual Harassment Procedures.

[3] Complaints that an individual may have engaged in retaliation related to Title IX Sexual Harassment are subject to review in accordance with the University's Title IX Sexual Harassment Procedures rather than under this regulation.