

# UNCSA Grievance Procedure for Sex-Based Harassment Complaints for Students and Employees

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# UNCSA Grievance Procedure for Sex-Based Harassment Complaints for Students and Employees

Effective: August 1, 2024

## I. Effective Date and Changes to Procedure Based on Court Rulings and Legal Challenges or Changes in Law or Regulation

This Grievance Procedure applies to incidents reported under the Title IX Policy that occur on or after August 1, 2024. Any incidents reported that occurred on or before July 31, 2024, will be processed through the institution's [Interim Title IX Regulation](#) or the [Prohibited Discrimination, Harassment, and Related Misconduct Regulation #121](#).

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024))<sup>1</sup>, be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedures in their entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or [Interim Title IX Regulation](#) or the [Prohibited Discrimination, Harassment, and Related Misconduct Regulation #121](#). The University of North Carolina School of the Arts ("UNCSA") will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

## II. Scope of Procedure<sup>2</sup>

Sex-Based Harassment is considered discrimination on the basis of sex if it includes harassment due to actual or perceived sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity.

## III. Jurisdiction of Procedure<sup>3</sup>

UNCSA's Title IX Coordinator will determine if this Grievance Procedure applies to a Complaint made under the University of North Carolina School of the Arts Title IX Regulation ("Title IX Policy"). This Grievance Procedure will apply when the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct alleged occurred on or after August 1, 2024;
- The conduct alleged occurred in the United States;
- The conduct alleged occurred in UNCSA's Education Program or Activity; and

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<sup>2</sup> 34 C.F.R. 106.10.

<sup>3</sup> 34 C.F.R. 106.11.

- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in the Title IX Policy.

If all elements of jurisdiction are met, UNCSA will investigate the allegations according to this Grievance Procedure as appropriate, unless informal resolution is pursued or there are grounds for dismissal of the Complaint.

### **Title IX Coordinator**

You can contact the Title IX Coordinator at any time to make a report or ask questions about the Grievance Procedure or the Title IX Policy.

**Valerie Thelen**  
**Chief Compliance Officer and Title IX Coordinator**  
**UNCSA Library Room 3209**  
**1533 S Main St**  
**Winston-Salem, North Carolina, 27127**  
[thelenv@unca.edu](mailto:thelenv@unca.edu)  
**336-932-3917**

**Make a report now: [Title IX Reporting Form](#)**

## **IV. Basic Requirements of the Grievance Procedure<sup>4</sup>**

UNCSA is required to:

- Treat Complainants and Respondents equitably;
- Ensure that any person designated by UNCSA as a Title IX Coordinator, investigator, or decisionmaker does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
- Establish reasonably prompt timeframes for the major stages of this Grievance Procedure, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay;
- Ensure that reasonable steps to protect the privacy of the Parties and witnesses during the pendency of the Grievance Procedure are taken, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to witnesses (as long as such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this Grievance Procedure;
- Ensure an objective evaluation of all evidence that is Relevant and not otherwise impermissible under this procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness;

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<sup>4</sup> 34 C.F.R. 106.45(b).

- Exclude impermissible evidence from consideration as defined in the Grievance Procedure; and
- Clearly articulate principles for how UNCSA will determine which policies and procedures apply if not all such Complaints are handled under this institutional Grievance Procedure.

**V. The Title IX Grievance Procedure for Allegations of Sex-Based Harassment**  
**A. Filing a Complaint<sup>5</sup>**

*Who can make a Complaint?*

- A Complainant (as defined in Section V(3) of this policy); or
- The Title IX Coordinator.

*Note on Title IX Coordinator initiated Complaints:* In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of Sex-Based Harassment. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant’s request not to proceed with the initiation of a Complaint;
- The Complainant’s reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of Sex-Based Harassment would occur if a Complaint is not initiated;
- The severity of the alleged Sex-Based Harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the Sex-Based Harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged Sex-Based Harassment, including information suggesting a pattern, ongoing Sex-Based Harassment, or Sex-Based Harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether Sex-Based Harassment occurred; and
- Whether UNCSA could end the alleged Sex-Based Harassment and prevent its recurrence without initiating these grievance procedures.

If after considering these and other Relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents UNCSA from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a Complaint.

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<sup>5</sup> 34 C.F.R. 106.45(a)(2).

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures as listed in Section VI of these procedures.

*Is there a particular format that the Complaint needs to be in?*

As defined in IV(4) of these procedures, a Complaint can be an oral or written request to UNCSA that objectively can be understood as a request for UNCSA to investigate and make a determination about alleged Sex-Based Harassment at the institution.

*Who can I report a Complaint to?*

Any reports of Sex-Based Harassment may be made directly to the Title IX Coordinator, whose contact information is listed at the beginning of this Grievance Procedure. There are other ways in which a Party may report a Complaint.

UNCSA requires that any employee who is not a Confidential Employee and who either has authority to institute corrective measures on behalf of UNCSA or has responsibility for administrative leadership, teaching, or advising in UNCSA's education program or activity must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination, including Sex-Based Harassment.

All other employees at UNCSA who are not Confidential Employees and are not employees as identified above are required to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex-discrimination, including Sex-Based Harassment about conduct that reasonably may constitute sex discrimination under this the Title IX Policy.

**Note:** If an employee has personally been subject to conduct that reasonably may constitute sex discrimination under Title IX or any institutional policy or this Grievance Procedure, these requirements do not apply to an employee reporting a personal Complaint.

*What is the timeframe for UNCSA to evaluate if the Title IX Coordinator is initiating an investigation under this Grievance Procedure?<sup>6</sup>*

The Title IX Coordinator must evaluate whether the Complaint falls under this Grievance Procedure within 15 business days after the Complaint is made, and must issue the Notice of Allegations as soon as practical after the Complaint is evaluated. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, on a case-by-case basis, with good cause and the rationale for the extension or delay.

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<sup>6</sup> 89 FR 33669.

*Can I make a Complaint and request initiation of the Grievance Procedure even if I have made a complaint to law enforcement?*<sup>7</sup>

Yes. UNCSA has an obligation to appropriately evaluate all Complaints, regardless of whether there is a concurrent Complaint before law enforcement. This process is an administrative process that is different from the criminal justice process.

### **B. Multi-Party Situations and Consolidation of Complaints<sup>8</sup>**

UNCSA may consolidate Complaints alleging Sex-Based Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sex-Based Harassment arise out of the same facts or circumstances.

UNCSA can consider factors when making this fact-specific determination, which include, but are not limited to:<sup>9</sup>

- The facts and circumstances of the particular Complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
- Any risks to the fairness of the investigation or outcome.

### **C. Dismissal of a Complaint<sup>10</sup>**

#### *Grounds for Dismissal*

UNCSA may dismiss a Complaint of Sex-Based Harassment for any of the following reasons:

- UNCSA is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in UNCSA's education program or activity and is not employed by UNCSA;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint through this Grievance Procedure, and UNCSA determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex-Based Harassment under Title IX or this Grievance Procedure even if proven; or
- UNCSA determines that the conduct alleged in the Complaint, even if proven, would not constitute Sex-Based Harassment under Title IX or these procedures. **Note:** UNCSA must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

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<sup>7</sup> 89 FR 33669.

<sup>8</sup> 34 C.F.R. 106.45(e).

<sup>9</sup> 89 FR 33690.

<sup>10</sup> 34 C.F.R. 106.45(d); 34 C.F.R. 106.46(d).

### *Notice of Dismissal*

If UNCSEA dismisses a Complaint, UNCSEA is required to promptly notify the Complainant of the basis for dismissal.

If the dismissal of the Complaint occurs before a Notice of Allegations is issued to the Respondent, the Title IX Coordinator does not need to notice the Respondent at that time. However, if the Complainant appeals the dismissal, the Respondent will need to be noticed of the Complaint allegations and given an opportunity to respond to the dismissal.<sup>11</sup> If the dismissal occurs after the Respondent has been notified of the allegations, then UNCSEA must notify the Respondent and Complainant of the dismissal and the basis for the dismissal simultaneously in writing.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as included below under *Appeal of Dismissals*.

### *Appeals of Dismissals*

UNCSEA must notify the Complainant that a dismissal may be appealed and provide the Complainant with an opportunity appeal the dismissal of a Complaint on the following grounds:<sup>12</sup>

- ***Procedural irregularity***: procedural irregularity that affected the outcome of the matter (i.e., a failure to follow UNCSEA's own policy to a degree that had material effect on the outcome of the matter);
- ***New evidence***: New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or dismissal of the Complaint was made; and
- ***Bias or Conflict of Interest***: The Title IX Coordinator, investigator(s), or decisionmaker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome of the matter.

If the dismissal occurs after the Respondent has been notified of the allegations, then UNCSEA must also notify the Respondent that the dismissal may be appealed on the grounds set out above.

The submission of appeal stays (or pauses) any sanctions for the pendency of an appeal.

Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, the institution will as soon as practicable notify the other Party in writing of the appeal, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

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<sup>11</sup> 89 FR 33689.

<sup>12</sup> Per 106.46(i)(2), a post-secondary institution may offer an appeal to the Parties on additional grounds, so long as the procedures and additional grounds for appeal are equally available to all Parties.



Appeals may be no longer than 5 pages (including attachments). Appeals should be submitted in electronic form using TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by the Vice Provost of Student Affairs who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

Outcome of appeal will be provided in writing simultaneously to both Parties, and include rationale for the decision.

#### **D. Allegations Potentially Falling Under Two Policies**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied in the investigation and adjudication of all of the allegations.

#### **E. Notice of Allegations<sup>13</sup>**

Upon initiating UNCSA's Grievance Procedure, the Title IX Coordinator shall provide a Notice of Allegations in writing to the Parties whose identities are known. Such notice will occur as soon as practicable after UNCSA receives a Complaint, if there are no extenuating circumstances. UNCSA will provide the Notice of Allegations within 15 business days after receiving a Complaint.

*What does the Notice of Allegations Include?*

The written Notice of Allegations must include:

- UNCSA's Grievance Procedure and Title IX Policy;
- Any other potential laws, regulations, or policies that may apply to the allegations;
- Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex-Based Harassment under the Grievance Procedure, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to UNCSA;
- A statement that the Parties are entitled to an equal opportunity to access the Relevant and not otherwise impermissible evidence; or
- A statement that the Respondent is presumed not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of UNCSA's Grievance Procedure and that prior to the determination, the Parties will have an opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;

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<sup>13</sup> 34 C.F.R. 106.45(c); 34 C.F.R. 106.46(c).

- Parties may have an advisor of their choice, and that the advisor may be, but is not required to be, an attorney;
- UNCOSA’s code of conduct prohibits knowingly making false statements or knowingly submitting false information during UNCOSA’s Grievance Procedure; and
- If, in the course of an investigation, UNCOSA decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided, UNCOSA is required to provide written notice of any additional allegations to the Parties whose identities are known.

*What if UNCOSA decides to investigate additional allegations of Sex-Based Harassment?*

If, in the course of an investigation, UNCOSA decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original issued written Notice of Allegations, or that are included in a Complaint that is consolidated under this Grievance Procedure, UNCOSA shall provide notice of the additional allegations to the Parties whose identities are known.

*What if I have safety concerns about a Notice of Allegations being issued to a Respondent?*

To the extent that UNCOSA has reasonable concerns for the safety of any person as a result of providing a written Notice of Allegations, UNCOSA through the Title IX Coordinator, may reasonably delay providing the written Notice of Allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

#### **F. Advisor of Choice and Participation of Advisor of Choice<sup>14</sup>**

A Party’s advisor of choice may accompany the Party to any meeting or proceeding, and that UNCOSA cannot limit the choice of who that advisor may be or their presence for the Parties in any meeting or proceeding unless such advisor disruptive or does not follow UNCOSA’s established rules of decorum and rules around participation.

#### **G. Investigation<sup>15</sup>**

##### *General Rules of Investigations*

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation of the conduct alleged to constitute Sex-Based Harassment in a reasonably prompt timeframe, after issuing the Notice of Allegations.

UNCOSA, and not the Parties, have the burden to conduct an investigation that gathers sufficient evidence to determine whether Sex-Based Harassment occurred under this Grievance Procedure.

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<sup>14</sup> 34 C.F.R. 106.46(e)(2).

<sup>15</sup> 34 C.F.R. 106.45(f); 34 C.F.R. 106.46(e).

This burden does not rest with either Party, and either Party may decide not to share their account of what occurred, or may decide not to participate in the investigation or hearing. This does not shift the burden of proof away from UNCSEA and does not indicate responsibility.

UNCSEA cannot access, consider, or disclose medical records without a waiver from the Party (or parent, if applicable) to whom the records belong, or of whom the records include information. UNCSEA will provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence, as described below.

#### *Notice of Participation*

UNCSEA will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate, if a Party is invited or expected to participate in any such meeting or proceeding.

#### *Advisors of Choice and Participation of Advisors of Choice*

UNCSEA will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding. An advisor may not be disruptive during any proceedings. Additional information regarding the advisor role can be found in the UNCSEA College and High School Student Handbooks, UNCSEA Code of Conduct, The UNC Policy Manual 700.4.1.

#### *Additional Support Persons Beyond Advisors of Choice*

Parties may have persons other than the advisor of the Parties' choice present during any meeting or proceeding. The support person should not be someone who the Party intends to call as a witness in the case.

#### *Expert Witnesses*

Parties may present expert witnesses as part of an investigation.

While the expert witness will be allowed to testify, the decisionmaker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses regardless of whether all Parties present experts as witnesses.

#### *Character Witnesses*

Character Witnesses are not allowed to testify during the hearing. A Party may submit a written statement from the Character Witness to the decisionmaker for consideration in the event there is a finding of a responsibility. The Character Witness written statement may be factored into the decision when determining a sanction if there is already a finding of a responsibility. The Character Witness statement may not be used during the determination of the actual allegations.

### *Access to and Review of the Investigative Report*

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party and their advisors of choice with a reasonable opportunity to respond to the investigative report. Both Parties will have the opportunity to respond to the investigative report prior to and during the live hearing.

UNCSA will take reasonable steps to prevent and address the Parties' and their advisors of choice's unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to UNCOSA's Code of Conduct and other UNCOSA regulations, policies, or procedures that may apply.

**Note:** Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

### *Review and Access to Relevant and Not Otherwise Impermissible Evidence*

Each Party will have an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are Relevant and not otherwise impermissible to the Title IX Coordinator and/or investigator designated by the Title IX Coordinator. The Title IX Coordinator will review all evidence gathered through the investigation and determine what evidence is Relevant and what evidence is impermissible regardless of relevance, consistent with this Grievance Procedure.

Each Party and their advisors of choice will have an equal opportunity to review and access the evidence that is Relevant to the allegations of Sex-Based Harassment and not otherwise impermissible regardless of relevance prior to the conclusion of the investigation. The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party with a reasonable opportunity to respond to the evidence. Both Parties will have the opportunity to respond to the evidence prior to and during the live hearing.

### *Relevant Evidence<sup>16</sup>*

Evidence is Relevant when it is related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure.

Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.

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<sup>16</sup> 89 FR 33694: relevance determinations are made throughout an investigation. To avoid inadvertently excluding relevant evidence, an institution may need to revisit an earlier relevance determination and reconsider a witness or a piece of evidence that the recipient had previously excluded.

### *Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are excluded as impermissible (i.e., must not be accessed or considered, except by UNCSA to determine whether an exception applies, must not be disclosed, and must not otherwise be used) regardless of whether they are Relevant:

- Evidence that is protected under a privileged as recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless UNCSA obtains that Party's or witness's voluntary, written Consent for use in UNCSA's Grievance Procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to the alleged Sex-Based Harassment. Note: the fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to the alleged Sex-Based Harassment or preclude determination that Sex-Based Harassment occurred.

### *Timeframes*

An investigation shall take X school/calendar/business days to complete. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, as detailed below.

### *Extensions and Delays*

UNCSA allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the Parties that includes the reason for the extension or delay.

## **H. Adjudication in a Student Respondent Case**

UNCSA will conduct the live hearing with the Parties physically present in separate locations, with technology enabling the decisionmaker and Parties to simultaneously see and hear the Party or the witness while that person is speaking.<sup>17</sup> The live hearing may be conducted with the Parties physically present in the same geographic location at the request of the Parties, but both parties must agree in writing for this option prior to the hearing.

UNCSA shall create an audio or audiovisual recording or transcript of any live hearing and make it available to the Parties for inspection and review.

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<sup>17</sup> 34 C.F.R. 106.46(g).

### *Participants in the Hearing in Student Respondent Cases*

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

#### *Complainant and Respondent in Student Respondent Cases*

If a Party chooses not to participate in the process or the hearing, the live hearing may still proceed in the absence of a Party, and UNCSEA may reach a determination of responsibility in their absence, including through any evidence gathered and other witness statements. UNCSEA will not threaten, coerce, intimidate or discriminate against any Party in an attempt to secure the Party's participation. The decisionmaker cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the live hearing, or a refusal to answer questions.

#### *The Decisionmaker in Student Respondent Cases*

The hearing body will consist of a single decisionmaker. No member of the hearing body will have served as the Title IX Coordinator, Title IX investigator, or advisor to any Party in the case, nor may any member of the hearing body serve on the appeals body in the case. For cases with a student Respondent, the decisionmaker will be the Director of Student Conduct. No member of the hearing body will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the Parties to the particular case. The hearing body will be trained prior to serving during any hearing. The Parties will have an opportunity to raise any objections regarding a decisionmaker's actual or perceived conflicts of interest or bias at the commencement of the live hearing. If the Director of Student Conduct is unable to serve as the decisionmaker, a designee will be appointed by the Vice Provost of Student Affairs.

#### *Advisor of Choice in Student Respondent Cases*

The Parties have the right to select an advisor of their choice, who may be, but is not required to be, an attorney. The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend but may not speak for the Party. An advisor of choice is not prohibited from being a witness in the hearing. Advisors of choice are subject to UNCSEA's rules of decorum and may be removed if disruptive to any proceedings.

The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party, except for the purpose of cross-examination. In addition to selecting an advisor to conduct cross-examination, the Parties may select an advisor who may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party. The Parties are not permitted to conduct cross-examination; it must be conducted by the advisor of choice. As a result, if a Party does not select an advisor to serve in this role for the limited purpose of conducting cross-examination one will be appointed at no fee or charge to the Party. The advisor of choice is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the particular case. If a Party does not attend the live hearing, the Party's advisor of choice may appear and conduct cross-examination on their behalf.

#### *Witnesses in Student Respondent Cases*

Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from Retaliation.

#### *Hearing Procedures in Student Respondent Cases*

For all live hearings conducted, the decisionmaker will open and establish rules and expectations for the hearing. The Parties will each be given an opportunity to provide opening statements. Questioning of the Parties and witnesses will occur according to the procedures below.

#### *Questioning Parties and Witnesses in Student Respondent Cases*

During a live hearing, each Party's advisor is allowed to ask Relevant and not otherwise impermissible questions and follow-up questions of the Parties and witnesses through the decisionmaker. No questioning of another Party or witness will be conducted by a Party personally.

If a Party does not have an advisor to ask questions of their behalf, UNCOSA will provide the Party with an advisor of UNCOSA's choice, without charge to the Party, for the purpose of advisor-conducted questioning. Such an appointed advisor will not be a Confidential Employee and UNCOSA may appoint, but is not required to appoint, an attorney to serve as an advisor.

#### *Procedures for Decisionmaker's Evaluation of Questions and Limitation on Questions in Student Respondent Cases*

The decisionmaker will determine whether a proposed question is Relevant and not otherwise impermissible as described in this Grievance Procedure, prior to the question being posed, and will explain any decision to exclude a question as not Relevant or otherwise impermissible.

If the decisionmaker determines that a Party's question is Relevant and not otherwise impermissible, then the question must be asked unless such question is unclear or harassing of the Party or witness being questioned. The decisionmaker must give a Party an opportunity to clarify or revise a question that the decisionmaker has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the question must be asked.

#### *Refusal to Respond to Questions and Inferences Based on Refusal to Respond to Questions in Student Respondent Cases*

A decisionmaker may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed Relevant and not impermissible.

The decisionmaker must not draw an inference about whether Sex-Based Harassment occurred based solely on a Party's or witness's refusal to respond to such questions.

Rules of decorum equally to the Parties.

#### *Continuances or Granting Extensions in Student Respondent Cases*

UNCOSA may determine that multiple sessions or a continuance (a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, UNCOSA will notify all

participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### **Newly discovered Evidence in Student Respondent Cases**

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a Party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the Party may request that such evidence or witnesses be considered at the live hearing.

The decisionmaker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The Party offering the newly discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the decisionmaker answers in the affirmative to both questions, then the Parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

#### **I. Adjudication of Employee Respondent Cases<sup>18</sup>**

UNCSEA does not provide for a live hearing under this Grievance Procedure for cases involving faculty or staff Respondents. However, Title IX requires that there be live questioning to assess a Party's or witness's credibility to the extent credibility is both in dispute and Relevant to evaluating one or more allegations of Sex-Based Harassment.

The investigator/decisionmaker will question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and Relevant to evaluating one or more allegations of Sex-Based Harassment. This will occur during individual meetings with a Party or witness.

Each Party shall have the opportunity to propose questions that the Party wants asked of any Party or witness and have those questions asked by the investigator/decisionmaker during one or more individual meetings, including follow-up meetings, with a Party or witness, subject to the appropriate procedures outlined below regarding the decisionmaker's advance evaluation of all questions. Each Party will be provided with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

The Title IX Coordinator or designee will conduct the investigation and make a finding of whether or not the Title IX Policy, and other related policies, were violated. The investigation, including determination, will be concluded in the Title IX Office and referred to the

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<sup>18</sup> 34 C.F.R 106.46(f)(i)



Respondent's immediate supervisor or manager. The Respondent's manager will make a determination on the sanction or disciplinary action for the Respondent.

Employees may have additional rights, procedures, and policies that apply to disciplinary action, adjudication, and available appeals.

Faculty: [UNCSA Faculty Manual 8.0 Employment Policies and Procedures for Faculty](#)

EHRA: [Grievance \(SAAO-II and other EHRA\) Policy 614](#)

SHRA: [Grievance \(SHRA\) Policy 615](#)

### **A. Determination Regarding Responsibility<sup>19</sup>**

#### *Standard of Proof*

UNCSA uses the preponderance of the evidence standard of proof to determine whether or not Sex-Based Harassment occurred. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Grievance Procedure occurred.

#### *General Considerations for Evaluating Evidence and Testimony*

The decisionmaker is required to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that Sex-Based Harassment occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that Sex-Based Harassment occurred.

Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decisionmaker. Decisionmakers shall not draw inferences regarding a Party or witness' credibility based on the Party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a Party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. However, credibility judgments should not rest on whether a Party or witness' testimony is non-linear or incomplete, or if the Party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by Parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

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<sup>19</sup> 34 C.F.R. 106.45(h); 34 C.F.R. 106.46(h).

A witness' testimony regarding third-Party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

### *Expert Witnesses*

Parties may present expert witnesses as part of an investigation.

Parties are allowed to call "expert witnesses" for direct examination and credibility assessment by the decisionmaker. While the expert witness will be allowed to testify, the decisionmaker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses regardless of whether all Parties present experts as witnesses.

### *Character Witnesses*

Character Witnesses are not allowed to testify during the hearing. A Party may submit a written statement from the Character Witness to the decisionmaker for consideration in the event there is a finding of a responsibility. The Character Witness written statement may be factored into the decision when determining a sanction if there is already a finding of a responsibility. The Character Witness statement may not be used during the determination of the actual allegations.

### *Witness Behavior*

Where a Party or witness' conduct or statements demonstrate that the Party or witness is engaging in retaliatory conduct, including without limitation, witness tampering and intimidation, the decisionmaker may draw an adverse inference as to that Party or witness' credibility.

### *Communication of the Determination in Writing*

All determinations on whether Sex-Based Harassment occurred will be communicated to the Parties in writing, simultaneously.

The written determination will include:

- A description of the alleged Sex-Based Harassment;
- Information about the policies and procedures that UNCSA used to evaluate the allegations;
- The decisionmaker's evaluation of the Relevant evidence and determination on whether Sex-Based Harassment occurred;
- Any Disciplinary Sanctions UNCSA will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will be provided by UNCSA to the Complainant, and, to the extent appropriate, other Students identified by UNCSA to be experiencing the effects of Sex-Based Harassment, if there is a finding that Sex-Based Harassment occurred; and
- UNCSA's procedures for Complainant and Respondent to appeal.

### *Timeline of Determination Regarding Responsibility*

If there are no extenuating circumstances, the determination regarding responsibility will be issued by UNCSCA within 15 business days of the completion of the hearing.

### *Finality of Determination*

The determination regarding responsibility becomes final either on the date that UNCSCA provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

## **B. Sanctions**

If a decisionmaker finds a Respondent responsible for violating the Title IX Policy after going through the Grievance Procedure, there are a range of sanctions that may be assigned depending on the factors related to the case. Below are a list of potential sanctions that may be implemented based on the findings by the decisionmaker:

***Sex-Based Harassment*** – Probation, Deferred Suspension, Suspension, Expulsion, Termination, Community Service, Reflection or Research Assignment or other Educational Outcome, Behavioral Contract, Mediation. If separable outcome: Enter into UNC Suspension & Expulsion (S&E) database.

***Sexual Assault*** – Deferred Suspension, Suspension, Expulsion, Termination. If re-entering after suspension: Community Service, Reflection or Research Assignment or other Educational Outcome, Behavioral Contract, Mediation. If separable outcome: Enter into UNC Suspension & Expulsion (S&E) database.

***Dating Violence*** – Deferred Suspension, Suspension, Expulsion, Termination. If re-entering after suspension: Community Service, Reflection or Research Assignment or other Educational Outcome, Behavioral Contract, Mediation. If separable outcome: Enter into UNC Suspension & Expulsion (S&E) database.

***Domestic Violence*** – Deferred Suspension, Suspension, Expulsion, Termination. If re-entering after suspension: Community Service, Reflection or Research Assignment or other Educational Outcome, Behavioral Contract, Mediation. If separable outcome: Enter into UNC Suspension & Expulsion (S&E) database.

***Stalking*** – Probation, Deferred Suspension, Suspension, Expulsion, Termination, Community Service, Reflection or Research Assignment or other Educational Outcome, Behavioral Contract, Mediation. If separable outcome: Enter into UNC Suspension & Expulsion (S&E) database.

## **C. Appeals<sup>20</sup>**

Each Party may appeal a determination regarding responsibility. To appeal, a Party must submit their written appeal within 5 (five) business days of being notified of the decision, indicating the grounds for appeal.

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<sup>20</sup> 34 C.F.R. 106.45(i); 34 C.F.R 106.46(i).

For appeals resulting from dismissal of a Complaint, please see the section on *Dismissal of Complaints*.

### *Grounds for Appeal*

The limited grounds for appeal available are as follows:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.
- A violation of due process.
- A material deviation from the Minimum Substantive and Procedural Standards for Student Disciplinary Procedures, Section 700.4.1 of the UNC Policy Manual.

### *Additional Procedures for Appeal Process*

UNCSA will notify the Parties of any appeal, provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome, and will notify the Parties of the result of the appeal and the rationale for the result.

The submission of an appeal stays (or pauses) any sanctions for the period during which an appeal determination is being assessed. Supportive Measures and remote learning opportunities remain available while an appeal is being deliberated and before a final decision has been made.

Appeals will be decided by the Chancellor or a designee, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

## **D. Informal Resolution<sup>21</sup>**

### *Procedures for Entering and Exiting Informal Resolution Process*

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Procedure, including prior to making a Complaint,<sup>22</sup> Parties may instead seek UNCSA's assistance to resolve allegations of Sex-Based Harassment, and may elect to enter the informal resolution process. The Parties may voluntarily elect to enter the UNCSA's informal resolution process at any time through an informed written Consent. This informed written Consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

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<sup>21</sup> 34 C.F.R. 106.44(k); 34 C.F.R. 106.45(k); 34 C.F.R. 106.46(j).

<sup>22</sup> 89 FR 33624-25.

No Party may be required to participate in informal resolution, and UNCSEA may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Procedure will temporarily cease, and only reinstate upon reentry into the Grievance Procedure.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex-Based Harassment does not continue or recur within UNCSEA's Education Program or Activity.

#### *Notice Prior to Entry Into Informal Resolution Process*

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume UNCSEA's Grievance Procedure;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming UNCSEA's Grievance Procedure arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information UNCSEA will maintain and whether and how UNCSEA could disclose such information for use in its Grievance Procedure if they are initiated or resumed.

#### *Determination to Approve Entry into Informal Resolution Process<sup>23</sup>*

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or other designated official must approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

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<sup>23</sup> 34 C.F.R. § 106.44(k)(1)(i) provides that the institution has discretion to determine whether it's appropriate to offer.

Informal resolution processes are not appropriate where the allegations include Sexual Assault: penetration or the equivalent.

At any time after the commencement of the informal resolution process, the Title IX Coordinator or other designated official may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Grievance Procedures. This determination is not subject to appeal.

If informal resolution is approved or denied, UNCSEA will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

### *Role of the Facilitator*

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a decisionmaker(s) in UNCSEA's Grievance Procedure. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may serve as the facilitator, subject to these restrictions.

All facilitators must have specialized training, required by law and regulation. Such training includes:

- UNCSEA's obligation to address sex discrimination, including Sex-Based Harassment, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including Sex-Based Harassment, under Title IX, including the definition of Sex-Based Harassment;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and UNCSEA's response to sex discrimination;
- The rules and practices associated with UNCSEA's informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

### *Contents of Informal Resolution Agreements*

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent's participation in one or more of UNCSEA's education programs or activities or attendance at specific events, including restrictions UNCSEA could have imposed as Remedies or Disciplinary Sanctions had UNCSEA determined at the conclusion of the Grievance Procedure that Sex-Based Harassment occurred.

### *Breach of Informal Resolution Agreements<sup>24</sup>*

If a Party breaches the resolution or if UNCSA has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, UNCSA may void the agreement and initiate or resume the Grievance Procedure.

### *Confidentiality*

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent Grievance Procedure or institutional appeal.

### *Informal Resolution Options*

UNCSA offers the following informal resolution procedures for addressing Complaints of Sex-Based Harassment described under this Grievance Procedure:

#### Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point during the informal resolution process, the institution may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a decisionmaker will convene to determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described.

#### Mediation

The purpose of mediation is for the Parties who are in conflict to identify the implications of a Student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate Remedies to address them. Either Party can request mediation to seek resolution; mediation will be used only with the Consent of both Parties, who will be asked not to contact one another during the process. The Title IX Office or designee will also review any request for

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<sup>24</sup> 89 FR 33625.

mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within 15 days after the Title IX Office receives Consent to mediate from both Parties and has made its determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator, or the Title IX Office. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedure.

During mediation, a facilitator will guide a discussion between the Parties. In circumstances where the Parties do not wish to meet face to face, either Party can request “caucus” mediation, and the facilitator will conduct separate meetings. Whether or not the Parties agree to meet face to face, each Party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the Parties. The Title IX Office will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

### Restorative Justice

A restorative justice (“RJ”) Conference is a dialogue, facilitated by an informal resolution facilitator with appropriate training, intended to restore relationships and repair harm after a conflict has occurred. Both the responsible Party and the individuals affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired.

A Party may request to engage in RJ at any stage of the disciplinary process, however, restorative justice may not be an appropriate mechanism for all conflicts. To qualify for RJ, the Student accused of wrongdoing must accept responsibility and express remorse for the harm that was caused. The harmed Party must also be willing to accept an apology offered by the Student accused of wrongdoing. Additionally, all involved Parties must agree to and abide by measurable and timely actions within the scope of this Policy and directives. The Title IX Office will review any request for RJ, and may decline to initiate RJ based on the facts and circumstances of the particular case.

The RJ Conference proceeds only if all Parties agree to participate willingly. Upon doing so, the RJ process typically commences within 15 days after the Title IX Office receives written agreements from all involved Parties. The conference will continue until the conference is successfully concluded or until the Title IX Office determines that the conference will not be



successful. If successful, an agreeable resolution is reached by all involved Parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the Title IX Office to re-evaluate other options for resolution.

The Title IX Coordinator or designee will monitor the Parties' adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.

## **VI. Retaliation<sup>25</sup>**

When UNCSEA has information about conduct that reasonably may constitute Retaliation under Title IX or its Grievance Procedure, UNCSEA is obligated to initiate its Grievance Procedure or, as appropriate, UNCSEA's informal resolution process.

UNCSEA will keep the identity of any individual who has made a report or Complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Complaint of Sex-Based Harassment or sex discrimination under UNCSEA's Title IX Grievance Procedure, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under UNCSEA's Title IX Grievance Procedure.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under UNCSEA's Grievance Procedure.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX, or its implementing regulations constitutes Retaliation. This includes any charges filed against an individual for Code of Conduct violations that do not involve sex discrimination or Sex-Based Harassment, but that arise from the same facts or circumstances as a report or Complaint of sex discrimination or a report or Complaint of Sex-Based Harassment.

Complaints alleging Retaliation may be filed according to the [Prohibited Discrimination, Harassment, and Related Misconduct Regulation #121](#).

## **Definitions**

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<sup>25</sup> 34 C.F.R. 106.71.

1. *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by UNCOSA.
2. *Consent* means a knowing, voluntary, and mutual decision among all participants to engage in mutually acceptable sexual activity freely given by clear actions or words. Consent may not be inferred from silence, passivity, or lack of resistance alone. A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.
3. *Complainant* means:
  - (1) a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in this Title IX Policy and who was participating or attempting to participate in UNCOSA's Education Program or Activity; or
  - (2) a person other than a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under this Title IX Policy and who was participating or attempting to participate in UNCOSA's Education Program or Activity at the time of the alleged Sex-Based Harassment.
4. *Complaint* means an oral or written request to UNCOSA that objectively can be understood as a request for UNCOSA to investigate and make a determination about alleged Sex-Based Harassment at the institution.
5. *Confidential Employee* means:
  - (1) an employee of UNCOSA whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
  - (2) an employee of UNCOSA whom the institution has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or
  - (3) an employee of UNCOSA who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.

6. *Disciplinary Sanctions* means consequences imposed on a Respondent following a determination under the Grievance Procedure that the Respondent violated UNCOSA's prohibition Sex-Based Harassment.
7. *Education Program or Activity* means any academic, extracurricular, research, occupational training or other Education Program or Activity operated by UNCOSA that receives Federal financial assistance.
8. *Party* means Complainant or Respondent.
9. *Peer Retaliation* means Retaliation by a Student against another Student.
10. *Relevant* means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.
11. *Remedies* means measures provided, as appropriate, to a Complainant or any other person UNCOSA identifies as having had their equal access to UNCOSA's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to UNCOSA's Education Program or Activity after UNCOSA determines that Sex-Based Harassment occurred.
12. *Report* refers to information brought to the Title IX Office alleging conduct prohibited under this Title IX Policy; a report is not considered to be a formal complaint. A party may bring a report and then subsequently file a formal complaint.
13. *Respondent* means a person who is alleged to have violated UNCOSA's prohibition on Sex-Based Harassment.
14. *Retaliation* means intimidation, threats, coercion, or discrimination by any person, by UNCOSA, a Student, or an employee or other person authorized by UNCOSA to provide aid, benefit, or service under UNCOSA's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing.
15. *Sex-Based Harassment* means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

(1) *Quid pro quo harassment*. An employee, agent or other person authorized by UNCSEA's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) *Hostile Environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from UNCSEA's Education Program or Activity (i.e., creates a Hostile Environment). Whether a Hostile Environment has been created is a fact-specific inquiry that includes consideration of the following: (i) the degree to which the conduct affected the Complainant's ability to access UNCSEA's Education Program or Activity; (ii) the type, frequency, and duration of the conduct; (iii) the Parties' ages, roles within UNCSEA's Education Program or Activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other Sex-Based Harassment in UNCSEA's Education Program or Activity;

(3) *Sexual Assault* (as defined in the Clery Act, 20 U.S.C. 1092(f)) means any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;

(4) *Dating Violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

(5) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of North Carolina or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of North Carolina.

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

16. *Student* means a person who has gained Admission.

17. *Supportive Measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive

or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that Party's access to UNCOSA's Education Program or Activity, including measures that are designed to protect the safety of the Parties or UNCOSA's educational environment; or (2) provide support during UNCOSA's Grievance Procedure for Sex-Based Harassment or during the informal resolution process.

18. Third Party refers to any individual who is not a University student, member of faculty or staff, (e.g., vendors, alumni/ae, or local residents).
19. Witness refers to any individual who shares information relating to an allegation of prohibited conduct under this policy.