

Resolving Allegations of Discrimination - Interim

Version 1

 Print

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Title	Resolving Allegations of Discrimination
Category	Personnel
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Contact	Associate Provost for Equity and Diversity, Office for Equity and Diversity, Suite G-406 Old Cafeteria Building, Phone: 252-328-6804, Email: oed@ecu.edu (mailto:oed@ecu.edu)

Related Policies

Notice of Nondiscrimination and Affirmative Action Policy (<https://policy.ecu.edu/05/25/02>)

ECU Equal Employment Opportunity Plan (<https://oed.ecu.edu/policies/eeo-plan/>)

Regulation on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence (REG06.40.03) (<https://policy.ecu.edu/06/40/03>)

Policy of the Board of Governors of the University of North Carolina Concerning Improper Relationships between Students and Employees (<https://www.northcarolina.edu/apps/policy/doc.php?id=120>)

Mediation and Grievance Procedure for SHRA Employees (REG06.35.02) (<https://policy.ecu.edu/06/35/02>)

Grievance Procedures for Complaints of Unlawful or Prohibited Harassment, Discrimination or Improper Relationships Brought Against East Carolina University Faculty Members or Administrators Holding Faculty Status (ECU Faculty Manual, Part XII, Section IV) (pdf) (<https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part12section4.pdf>)

Review Process and Procedure for EHRA Non-Faculty Employees (POL06.35.01) (<https://policy.ecu.edu/06/35/01>)

Clinical Support Services (CSS) Disciplinary Policy (POL12.40.01) (<https://policy.ecu.edu/12/40/01>)

Appointment, Tenure, Promotion, and Advancement Policies and Procedures and Performance Review of Tenured Faculty (ECU Faculty Manual, Part IX) (pdf) (<https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part9.pdf>)

Personnel Action Dossier and Tenure and Promotion Schedule (ECU Faculty Manual, Part X) (pdf) (<https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part10.pdf>)

**Additional
References**

Title VI (<https://www.dol.gov/agencies/oasam/regulatory/statutes/title-vi-civil-rights-act-of-1964>) and Title VII (<https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>) of the Civil Rights Act of 1964, as amended

Title IX of the Education Amendments of 1972 (<https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/title-ix>)

Section 799A and 845 of the Public Health Service Act (<https://www.govinfo.gov/app/details/CFR-2000-title45-vol1/CFR-2000-title45-vol1-part83>)

Equal Pay Act of 1963, as amended (<https://www.dol.gov/agencies/oasam/regulatory/statutes/equal-pay-act>)

Age Discrimination in Employment Act of 1967, as amended (<https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967>)

Rehabilitation Act of 1973, as amended (<https://www.eeoc.gov/statutes/rehabilitation-act-1973>)

Pregnancy Discrimination Act of 1978 (<https://www.eeoc.gov/statutes/pregnancy-discrimination-act-1978>)

Civil Rights Restoration Act of 1988 (https://www.fhwa.dot.gov/environment/environmental_justice/legislation/restoration_act.cfm)

Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (<https://www.dol.gov/agencies/ofccp/vevraa/as-amended>)

Civil Rights Act of 1991 (<https://www.eeoc.gov/statutes/civil-rights-act-1991>)

Americans with Disabilities Act of 1990, as amended (<https://www.ada.gov/pubs/ada.htm>)

Title II of the Genetic Information Non-discrimination Act of 2008 (<https://www.eeoc.gov/statutes/genetic-information-nondiscrimination-act-2008>)

Executive Order 11246 of 1965, as amended (<https://www.dol.gov/agencies/ofccp/executive-order-11246/as-amended>)

N.C. General Statutes Section 126-16, as amended (https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_126/Article_6.html)

N.C. General Statutes Section 116-11(3a) (https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_116/gs_116-11.html)

The Code of the University of North Carolina, Section 103 (<https://www.northcarolina.edu/apps/policy/doc.php?id=54>)

The Age Discrimination Act of 1975 (<https://www.dol.gov/agencies/oasam/regulatory/statutes/age-discrimination-act>)

Other applicable federal and state laws:

U.S. Equal Employment Opportunity Commission (<https://www.eeoc.gov/>)

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

North Carolina Civil Rights Division of the Office of Administrative Hearings (<https://www.oah.nc.gov/>)

1. Introduction

1.1. East Carolina University ("ECU" or "University") prohibits unlawful discrimination, harassment and/or related retaliation as defined in the *Notice of Nondiscrimination and Affirmative Action Policy* ("Policy") based on the following protected classes: race/ethnicity, color, genetic information, national origin, religion, sex (including pregnancy and pregnancy related conditions), sexual orientation, gender identity, age, disability, political affiliation, and veteran status ("Protected Class"). ECU will promptly, equitably, impartially, and thoroughly resolve complaints of unlawful discrimination, harassment and/or related retaliation based on an ECU Protected Class.

1.2. This regulation provides the resolution procedures for complaints of unlawful discrimination, harassment and/or related retaliation; discrimination against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant (as defined in the *Notice of Nondiscrimination and Affirmative Action Policy*); and, reports of improper relationships, as defined in the *Policy of the Board of Governors of the University of North Carolina Concerning Improper Relationships between Students and Employees* (collectively, within this regulation, hereafter referred to as "Prohibited Conduct").

1.3. The University will take appropriate steps to address all allegations of Prohibited Conduct, whether an individual requests the formal or alternative resolution or reports a concern informally and/or anonymously.

1.4. Complaints of sexual and gender-based harassment, sexual assault, offensive touching, sexual exploitation, dating and domestic violence, stalking, complicity, and related retaliation are exempted from this regulation and will be handled in accordance with procedures outlined in Appendices A and B of the *Regulation on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence*.

2. Definitions

2.1. **Complainant** - an individual alleging Prohibited Conduct and/ or the individual(s) allegedly subjected to the Prohibited Conduct.

2.2. **Discrimination** - actions that subject individuals to unfavorable or unequal treatment based on a Protected Class.

2.2.1. Discrimination includes failing to provide reasonable accommodations to a qualified person with a disability, failing to provide a reasonable religious accommodations, and failing to provide a reasonable accommodations for pregnancy or pregnancy related conditions, consistent with state and federal law.

2.3. **Harassment** - a form of discrimination. Harassment is unwelcome conduct based on a Protected Class, as defined in Paragraph 1.1 above, which creates either quid pro quo harassment or a hostile environment, as defined in Paragraph 2.3.1 and Paragraph 2.3.2, below. It also includes Sexual Harassment and Gender-Based Harassment as defined and addressed in the *Regulation on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence*.

2.3.1. **Quid Pro Quo Harassment** - submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities or is used as the basis for University decisions affecting the individual.

2.3.2. **Hostile Environment Harassment** - A "hostile environment" exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University's education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The perceived offensiveness of a single verbal or written expression,

standing alone, is typically not sufficient to constitute a hostile environment.

2.4. Investigator - the individual responsible for reviewing and/or investigating Complaints of Prohibited Conduct and ensuring effective and efficient resolution of those Complaints.

2.5. Preponderance of the Evidence Standard - meeting the preponderance of evidence standard constitutes a conclusion it is more likely than not that the alleged Prohibited Conduct occurred. This standard will be used to evaluate the evidence for purposes of making findings and drawing conclusions for an investigation conducted under this regulation.

2.6. Respondent - an individual accused of Prohibited Conduct in a complaint.

2.7. Retaliation - any adverse action taken against an individual because of protected activity that might deter a reasonable person from engaging in protected activity. It includes any act of interference, restraint, penalty, discrimination, coercion, reprisal, intimidation, threats, or harassment against an individual for using the applicable policies responsibly (including making a charge of discrimination protected by this policy; testifying, assisting, or participating in a hearing, proceeding, review process or investigation of discrimination; opposing an illegal act; or exercising any other right protected by this policy).

2.8. Vice Chancellor and/or other appropriate University administrator(s) - all references to the appropriate Vice Chancellor mean the Vice Chancellor with supervisory responsibility over the Respondent or, in the Chancellor's Division, the supervisor that the Chancellor determines to be appropriate, such as the Director of Athletics, Chief of Staff, Chief Audit Officer, or Vice Chancellor for Legal Affairs. However, the Chancellor may assume this responsibility or designate another Vice Chancellor in the event the Vice Chancellor with supervisory authority over the Respondent is unavailable; is a witness in the investigation; has a conflict of interest; or when the Chancellor determines that a substitution is necessary to ensure a fair and timely review.

3. University Grievance Procedures for Complaints of Prohibited Conduct Outlined in this Regulation

3.1. Procedures for Reporting Prohibited Conduct Filed By an SHRA Employee

3.1.1. Complaints filed by an SHRA employee are governed by the grievance procedures presented in the Mediation and Grievance Procedure for SHRA Employees (<https://policy.ecu.edu/06/35/02>) (Regulation 06.35.02) ("SHRA Grievance Procedure") if the SHRA employee files the complaint within fifteen (15) calendar days after the last incident of conduct grievable under the SHRA Grievance Procedure. Complaints filed by an SHRA employees more than 15 calendar days after the last incident will be addressed in accordance with this regulation.

3.2. Procedures for Reporting Prohibited Conduct Against a SHRA, CSS, or EHRA Non-faculty Employee

3.2.1. Complaints brought against CSS, EHRA non-faculty, or SHRA employees not falling within the *Mediation and Grievance Procedure for SHRA Employees* will be addressed in accordance with this regulation.

3.3. Procedures for Reporting Prohibited Conduct Against an ECU Faculty Member

3.3.1. Complaints brought against ECU faculty members or administrators holding faculty status ordinarily are governed by the procedures presented in the *Grievance Procedures for Complaints of Unlawful or Prohibited Harassment, Discrimination or Improper Relationships Brought Against East Carolina University Faculty Members or Administrators Holding Faculty Status* (<https://www.ecu.edu/cs-acad/fsonline/customcf/currentfacultymanual/part12section4.pdf>) in the *ECU Faculty Manual* except complaints that fall within the *Mediation and Grievance Procedure for SHRA Employees* as described above in Paragraph 3.1.

3.4. Procedures for Reporting Prohibited Conduct Against ECU Students

3.4.1. Complaints brought against ECU students are governed by the *Student Conduct Process* (<https://policy.ecu.edu/11/30/01>) (REG11.30.01) except complaints filed by an ECU SHRA employee as described

above in Paragraph 3.1.

4. Resolving Complaints of Prohibited Conduct

4.1. Obligation to Review Prohibited Conduct

4.1.1. Consistent with the *Notice of Nondiscrimination and Affirmative Action Policy*, if the University becomes aware of any information or concerns related to Prohibited Conduct, the Office for Equity and Diversity ("OED") may conduct a formal or alternative resolution regardless of whether or not it receives a formal complaint. OED will conduct an initial assessment of each report upon receipt of the report to determine if it is within OED's purview prior to conducting any type of resolution.

4.2. Office for Equity and Diversity Resolution Procedures for Complaints of Prohibited Conduct

4.2.1. Reporting the Prohibited Conduct

4.2.1.1. A Complainant may try to resolve an incident of Prohibited Conduct by talking with their supervisor (or other member of management in the supervisory chain if the supervisor is the Respondent), or OED. Supervisors must consult with the OED prior to attempting to resolve the complaint. If the Complainant is not satisfied with the outcome of that discussion or does not feel comfortable talking with the supervisor about the issue, the Complainant should report the Prohibited Conduct to OED and seek alternative or formal resolution as explained below.

4.2.1.2. Complaints of Prohibited Conduct should be reported to OED within one hundred and eighty (180) calendar days of the alleged conduct. Complaints submitted after one hundred and eighty (180) calendar days will be reviewed by OED and handled appropriately depending on the facts of each case but may not be able to be investigated due to the passage of time and unavailability of witnesses or other relevant information necessary to complete an investigation. In cases that also involve the State Human Resources Act grievance process, the timelines stated in that Act apply.

4.2.1.3. Complaints outlining details of Prohibited Conduct can be submitted to OED by any of the following means:

4.2.1.3.1. Completing the online Complaint Form. (<https://oed.ecu.edu/report/> (<https://oed.ecu.edu/report/>))

4.2.1.3.2. Submitting a written report in person or via mail using the contact information in Paragraph 10.

4.2.1.3.3. Submitting a report verbally in person or by telephone using the contact information in Paragraph 10.

4.2.1.4. Complaints should include, if possible, the following information:

4.2.1.4.1. Complainant name(s) and contact information.

4.2.1.4.2. Name(s) of the Respondent(s).

4.2.1.4.3. Details of Prohibited Conduct, including the date(s), time(s), and place(s).

4.2.1.4.4. Name(s) of individuals with knowledge of issue(s) or event(s).

4.2.1.4.5. The desired outcome or corrective action sought.

4.2.1.5. At any time, a complaint may be filed with the U.S. Equal Employment Opportunity Commission ("EEOC"), U.S. Department of Education's Office for Civil Rights ("OCR"), or the North Carolina Civil Rights Division of the Office of Administrative Hearings. The agency website links can be found above in the Additional References section.

4.2.2. Alternative Resolution Process

4.2.2.1. The Complainant may request an alternative resolution in place of formal resolution. OED has the discretion to determine if the nature of the Prohibited Conduct is not appropriate for alternative resolution, to limit the type of alternative resolution that may be appropriate in a specific case and, to refer a report for formal resolution at any time. At any point prior to the conclusion of the alternative resolution, the Complainant may withdraw their request for an alternative resolution and initiate the formal resolution process.

4.2.2.2. Alternative resolutions may include, but are not limited to, providing the Complainant with University and community resources, referring the concerns to the Respondent's supervisor, referring the complaint to the Conflict Resolution and Mediation Program, and/or providing education to the Respondent.

4.2.2.2.1. Additionally, if the report of Prohibited Conduct includes matters that fall within the jurisdiction of one or more University offices, OED may conduct a joint review with those offices as necessary.

4.2.3. Formal Resolution Process

4.2.3.1. Formal resolution is an investigation to determine, considering the totality of all evidence available and using the Preponderance of Evidence Standard, whether the Prohibited Conduct occurred. Formal resolution also includes steps taken to address findings of Prohibited Conduct to remedy its effects and to prevent its recurrence.

4.2.3.2. Preliminary Inquiry:

4.2.3.2.1. Upon receiving a complaint, the investigator will conduct a preliminary inquiry and assess the details of the complaint to determine whether the report alleges facts that, if true, constitutes Prohibited Conduct within OED's jurisdiction. If the complaint is unclear, the investigator may seek additional information from the Complainant.

4.2.3.2.2. If the preliminary inquiry of the complaint indicates that, if true, does not constitute Prohibited Conduct, the investigator may resolve this type of complaint through the alternative resolution process and notify the Complainant of the resolution.

4.2.3.2.3. If the preliminary inquiry indicates that the complaint is not within OED's jurisdiction, the investigator will notify the Complainant of the appropriate University office for referral.

4.2.3.3. Confirmation of Specific Allegations:

4.2.3.3.1. If the Complainant would like to proceed with formal resolution, and/or the investigator determines formal resolution is necessary, the Complainant will be asked to confirm the details of the complaint in writing prior to commencement of the investigation. The Complainant should maintain confidentiality of the investigation information and must not conduct their own review and/or investigation of the allegations. The Complainant, Respondent and any employee who provides information or otherwise participates in the investigation will be notified of the University's policy prohibiting retaliation.

4.2.3.3.2. OED does not make any conclusions or presumptions regarding the complaint prior to a complete investigation of the complaint. OED is committed to treating all parties equitably and impartially.

4.2.3.4. Notice of Investigation:

4.2.3.4.1. Upon the initiation of an investigation, the investigator will notify the Complainant and the Respondent in writing of the complaint and the specific allegations. The Respondent will be given the opportunity to submit any information relevant to the complaint, including a written or verbal response. The Respondent must not conduct their own review and/or investigation of the complaint.

In addition, the Respondent should not contact or speak with the Complainant about the complaint and should not engage related retaliation prohibited by the Notice of Nondiscrimination and Affirmative Action Policy. The Respondent may, at any time, elect to resolve the formal resolution process by accepting responsibility for the Prohibited Conduct, in which case the investigator will refer the matter to the appropriate Vice Chancellor and/or other appropriate University administrator(s) for imposition of sanction(s) and/or other appropriate action. The Complainant will be notified of the conclusion of the investigation and any action taken as permitted by applicable law.

4.2.3.5. Advisors:

4.2.3.5.1 Throughout the process, each party has the right to choose and consult with an advisor. The advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings, except advisors may participate as required/permitted by any applicable UNC policy or state or federal law.

4.2.3.6. Evidence:

4.2.3.6.1. Both the Complainant and the Respondent will have the opportunity to provide evidence and/or witnesses relevant to the complaint.

4.2.3.6.2. The investigator will meet with the witness(es) the investigator deems relevant to the investigation.

4.2.3.7. Timeframes and Notification:

4.2.3.7.1. OED will make every effort to promptly, equitably, and thoroughly investigate claims of Prohibited Conduct within approximately sixty (60) business days from the issuance of the notice of the investigation outlined in 4.2.3.4. Although investigations are generally completed within approximately sixty (60) business days, occasionally the process may take longer depending on the nature or complexity of the issues, extenuating circumstances, the availability of witnesses, and/or University closures.

4.2.3.7.2. OED will contact the Complainant and Respondent with a status update of the investigation approximately thirty (30) business days from the Complainant's confirmation of the complaint. If the investigation extends beyond sixty (60) business days, the Complainant and Respondent will be provided a status update at sixty (60) business days and then at every thirty (30) business day interval thereafter.

4.2.3.8. Conclusion of Investigation:

4.2.3.8.1 Upon completion of the investigation, the OED will issue a written report with the findings of the investigation to the Respondent's divisional Vice Chancellor and/or other appropriate University administrator(s).

4.2.3.8.2. OED will concurrently issue a notice of findings to both the Complainant and Respondent. If an investigation reveals conduct that may violate other University policies, the investigator will notify the applicable University office of the conduct.

4.2.3.8.3. OED's findings may not be appealed and constitute the University's final decision except that OED may exercise discretion to amend its findings in the event it becomes aware of new information that materially impacts the findings of the investigation or if material facts relied upon to reach its findings are later determined to be inaccurate. In the event OED amends its findings it will

reissue its report to the Respondent's divisional Vice Chancellor and/or other appropriate University administrator(s) and notice of findings to the Complainant and Respondent.

4.2.3.9. Vice Chancellor Review:

4.2.3.9.1 Upon receipt of the written report with the findings of the investigation, the appropriate Vice Chancellor and/or other appropriate University administrator(s) will review and, as appropriate, take disciplinary and/or other action in accordance with applicable policy.

4.2.3.10. Sanctions:

4.2.3.10.1. Disciplinary action imposed against a Respondent who engaged in Prohibited Conduct or other misconduct revealed by the investigation may include one or more of the following: training, progressive disciplinary action, restrictions on interactions with students or other members of the ECU community, No-Contact Directive, transfer of position, removal of administrative appointment, demotion, suspension without pay, and discharge from employment. A Respondent may appeal the imposition of disciplinary action as permitted by any disciplinary policy applicable to the Respondent.

4.2.3.10.2. Any sanction or combination of sanctions imposed upon a Respondent will be documented in the Respondent's personnel file.

5. Obligation to Provide Truthful Information

5.1. All University community members are expected to provide truthful information in any report or proceeding under this Regulation. Providing false or misleading information is prohibited and may subject the individual to disciplinary action consistent with University policy applicable to the individual. This provision does not apply to information provided in good faith, even when the alleged facts cannot be substantiated or are found to be incorrect.

6. Privacy

6.1. OED will protect the Complainant's privacy to the extent possible under applicable law. In some situations, including those in which disciplinary action is a possible outcome, due process may require disclosure of information, including Complainant's identity, to the Respondent.

6.2. If the Complainant would like to remain anonymous, the investigator will explain that OED will endeavor to investigate the complaint in a manner that honors the Complainant's request for anonymity, but that the University cannot ensure complete confidentiality and/or it may be limited in its ability to take disciplinary action if the Complainant insists he/she remain anonymous.

7. Conflict of Interest

7.1. If any party involved in an investigation is or becomes aware of a real or perceived conflict of interest that will prevent OED or a particular investigator from rendering an impartial decision, the party should notify OED and request an alternate investigator. The University may also, by exercise of its own discretion, appoint an alternate investigator absent a request if it knows of or learns of a real or perceived conflict of interest. If this occurs, the parties will be notified as appropriate.

8. Records

8.1. ECU will maintain confidentiality of the investigation record in accordance with applicable law, including but not limited to, the N.C. personnel records statute found at N.C. General Statute Chapter 126, Article 7 et seq. and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99). The information contained in the investigation record generally will not be released without the written consent of the individuals who are the subject of the records. However, investigation records may be shared with third parties, such as the EEOC, OCR or other government investigatory body, to the extent required or allowed under applicable law.

9. Prevention and Education

9.1. Employees

9.1.1. All employees are responsible for completing educational modules about Prohibited Conduct every five years. New employees must complete these required trainings within ninety (90) days of their hire date.

9.1.2. Education is one of the most effective ways to create an environment free of discrimination, harassment, and related retaliation.

9.1.3. The modules are accessible for all permanent employees via Cornerstone and via Blackboard for temporary or short-term employees as well as student employees.

9.1.4. OED will track employee completion of the module and will notify an employee's respective Vice Chancellor and/or other appropriate University administrator(s) of noncompliance.

9.1.5. Questions about the educational modules should be directed to OED at the contact information above and below in paragraph 10.

10. Contact Information

Office for Equity and Diversity
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Suite G-406 Old Cafeteria Building
Greenville, NC 27858
(252) 328-6804
oed@ecu.edu

East Carolina University

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