

### **Regulation Applicable to Policy on Title IX Sexual Harassment**

I. Purpose. This regulation provides guidance regarding how the constituent institutions of the University of North Carolina (hereinafter, “UNC constituent institutions”) shall comply with the requirements of the U.S. Department of Education’s rule titled *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30,026 (May 19, 2020) (the “Title IX Rule”), in conjunction with the University of North Carolina’s student, faculty, and employee disciplinary policies, including Section 700.4.1 of the UNC Policy Manual (“Section 700.4.1”); Chapter VI of *The Code of the Board of Governors of the University of North Carolina* (“*The Code*”), including Section 603 (“Section 603”); the SHRA Disciplinary Action Policy (“SHRA DAP”); and the SHRA Grievance Policy.

II. Title IX Complaint Resolution Process. Each institution shall adopt a Title IX complaint resolution process. The intersection of the Title IX Rule’s required Title IX complaint resolution process with the protections afforded to SHRA employees, faculty members, and students under the SHRA Grievance Policy, the SHRA DAP, *The Code*, and the UNC Policy Manual is discussed below. Disciplinary sanction decisions and review of personnel actions affecting SHRA employees that may arise following a Title IX complaint resolution process shall be governed by applicable constituent institution or UNC System Office procedures that apply to the affected SHRA employees.

A. SHRA DAP. If the Title IX complaint resolution process results in a determination of responsibility against a respondent who is an SHRA employee, the decision-maker’s sanction shall be a referral, which may recommend proposed discipline, to designated institutional authorities for consideration through the processes provided for in the SHRA DAP. The written determination of responsibility and referral from the Title complaint resolution process may become the official recommendation of the supervisor for any required Pre-Disciplinary Conference (i.e., for sanctions of disciplinary suspension without pay; demotion; or dismissal).

Following the issuance of the disciplinary sanction, an SHRA employee may file a grievance in accordance with the SHRA Grievance Policy. In grievances involving disciplinary sanctions imposed based upon the Title IX complaint resolution process, the Title IX record<sup>1</sup> may be included as evidence of the grounds for the disciplinary sanction; however, the determination(s) of responsibility is not subject to review. The SHRA grievance review shall be limited to whether the conduct for which the grievant was found responsible constitutes “just cause” for the relevant disciplinary sanction.

B. SHRA Grievance Policy. Any appeal from a Title IX determination regarding responsibility or from dismissal of a formal Title IX complaint shall be resolved within the Title IX complaint resolution process and shall not constitute a grievable issue under the SHRA Grievance Policy.

In grievances involving disciplinary sanctions imposed based upon the Title IX complaint resolution process, the hearing officer or hearing panel may receive as evidence the Title IX record. Any Title IX determination(s) of responsibility is not subject to review. The grievance review shall be limited to the question of whether the disciplinary sanction is supported by just cause.

C. Section 603 of *The Code*

1. If the Title IX complaint resolution process results in a determination of responsibility against a respondent who is a faculty member and the beneficiary of institutional guarantees of tenure, then the decision-maker's sanction shall be a referral, which may recommend proposed discipline, to designated institutional authorities for consideration of appropriate disciplinary sanction, if any.

2. In proceedings under Section 603 of *The Code* involving imposition of serious sanctions based upon the Title IX complaint resolution process, the Title IX record may be included as evidence of the grounds for the sanction; however, the Title IX determination(s) of responsibility is not subject to review. The review shall be limited to the question of whether the recommended sanction is supported by clear and convincing evidence.

D. Section 611 of *The Code*. Any appealable issue within the Title IX complaint resolution process shall be resolved through the Title IX complaint resolution process. Such appealable issues, and Title IX determinations of responsibility, are not grievable under Section 611 of *The Code*.

E. Section 700.4.1 of the UNC Policy Manual Section. In a Title IX complaint resolution process that involves a student as a respondent, if an institution promulgates rules governing the use and appointment of attorney and non-attorney advocates under Section 700.4.1[R] of the UNC Policy Manual, these rules shall apply equally to all parties, students and nonstudents alike.

If parties within the Title IX complaint resolution process are subject to appeal rights under Section 502(D)(3) of *The Code*, grounds for appeal required by 34 C.F.R. 106.45(b)(8)(i), constitute appeals under Section 502(D)(3)(a).

III. The UNC System Office will provide compliance assistance and support to constituent institutions upon request or as needed.

IV. Other Matters

A. Effective Date. The requirements of this regulation shall be effective upon the date of adoption of this regulation by the president.

B. Relation to Federal and State Laws and Policies. The foregoing regulation as adopted by the president is meant to supplement, and does not purport to supplant or modify, those statutory enactments, regulations, and policies which may govern or relate to the subject matter of this regulation.

---

<sup>1</sup>The Title IX record may include all evidence shared with the parties under 34 C.F.R. 106.45(b)(5)(iv); the investigative report; the written determination under 34 C.F.R. 106.45(b)(7)(ii); and the audio recording, audiovisual recording, or transcript of any live hearing kept under 34 C.F.R. 106.45(b)(6)(i).