

CLERY COMPLIANCE

# TITLE IX

UNC PEMBROKE

## Sexual Harassment Regulation

Prohibition against Sex-Based Discrimination, Harassment,  
Sexual Violence, and all other forms of Sexual Misconduct

PR 04.25.05

**Sexual Harassment Regulation:  
Prohibition Against Sex-Based Discrimination, Harassment, and Sexual Violence and All Other Forms of  
Sexual Misconduct**

**Authority:** Chancellor

**History:**

- First Issued: Prior to 2015
- Revised: December 1, 2015; June 1, 2016; August 26, 2016; October 30, 2018
- Last Revised: July 30, 2020

**Related Policies:**

- [UNC Policy Manual, The Code – Section 502 D.\(3\): Relation of the Chancellor to the Constituent Institution \(pg. 21\)](#)
- [UNCP POL 04.10.01 - Campus Crime Reporting Policy](#)
- [UNCP Policy - Prohibiting Illegal Harassment and Discrimination Policy](#)
- [UNC Policy Manual 700.4.1.1\[R\] - Right to an Attorney or Non-Attorney Advocate for Student and Student Organizations](#)
- [Family Educational Rights and Privacy Act \(FERPA\)](#)
- [US Department of Education - Office for Civil Rights: Dear Colleague Letter](#)

**Additional References:**

- [University of North Carolina - Campus Security Initiative](#)
- [UNC Pembroke Student Handbook](#)
- [20 U.S. Code § 1681 - Sex](#)
- [2020 Title IX Regulations](#)
- [U.S. Department of Education - Office for Civil Rights: Title IX and Sex Discrimination](#)
- [20 U.S. Code § 1092\(f\) - Disclosure of campus security policy and campus crime statistics](#)
- [Office for Civil Rights' Title IX Regulations, 2020](#)
- [Office for Civil Rights' Dear Colleague Letter, April 2015](#)
- [Office for Civil Rights' Title IX Resource Guide, April 2015](#)
- [Office for Civil Rights' Dear Colleague Letter, October 2010 \(Bullying\)](#)
- [Know Your IX](#)
- [Summary of the Jeanne Clery Act](#)
- [Campus Clarity](#)
- [North Carolina Coalition Against Sexual Assaults - NC Rape Crisis Centers](#)
- [Rape Crisis Center of Robeson County](#)
- [Domestic Violence and Rape Crisis Center of Scotland County](#)
- [Rape Crisis Volunteers of Cumberland County](#)
- [Friend to Friend of Moore County](#)

**Contact Information:** Director, Title IX and Clery Compliance, 910.521.6281

## **1. Introduction**

1.1 **Non-Discrimination Statement:** The University of North Carolina at Pembroke (UNC Pembroke) prohibits discrimination based on a person’s status as a veteran or an individual with a disability, and prohibits discrimination against all individuals based on their age, race, color, religion, sex, sexual orientation, gender identity, genetic information, and national origin.

1.2 The university has zero-tolerance for sexual harassment in all forms, including but not limited to: sex-based discrimination and harassment and sexual violence committed against students, employees, visitors to the campus, and other persons who use university facilities or participate in university programs or activities. UNC Pembroke is committed to the prevention of sex-based discrimination and harassment, and sexual violence, to include, dating violence, domestic violence, stalking, and sexual assault.

## **2. Scope**

2.1 This regulation encompasses Title IX of the Education Amendments Act of 1972, The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (The Clery Act) as amended by the Violence Against Women Act (VAWA), in 2013, and Title VII of the Civil Rights Act of 1964. (sexual harassment and Sexual violence offenses)

2.2 Title IX of the Education Amendments of 1972, as amended, prohibits discrimination on the basis of sex in any federally funded education program or activity. Sex-based discrimination and sexual violence are forms of sexual harassment prohibited under state and federal laws including Title IX. Sexual harassment may be verbal, non-verbal or physical in nature, such as persistent unwanted sexual advances or request for sexual favors. Sexual harassment also includes acts of sexual violence. The Clery Act and the VAWA also prohibit sexual violence on university and college campuses and requires campuses to maintain and publicize crime statistics (to include statistics on sexual violence) and provide training and education programs. Title VII of the Civil Rights Act of 1964 also prohibits discrimination on the basis of sex, among other protected classes, and includes protections in the workplace for gay and transgender employees.<sup>1</sup>

2.3 The core purpose of this policy is the prohibition of all forms of sex-based discrimination and harassment. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence and/or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using UNC Pembroke’s Sexual Harassment Resolution Process, which includes the options of: 1) Informal Resolution Process (Mediation); 2) Formal Grievance Process (FGP, Title IX sexual harassment); or 3) Inclusive Complaint Process (ICP, Non-Title IX sexual harassment). The appropriateness of which process to utilize is determined by the Title IX Coordinator, and as detailed below.

2.4 When the Respondent is a member of the UNC Pembroke community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the UNC Pembroke community. This community includes, but is not limited to, students,<sup>2</sup> student organizations, faculty, staff, and third parties such as guests, visitors, vendors, volunteers, invitees, and campers. The procedures below may be applied to particular incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this regulation.

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<sup>1</sup> *Bostock v. Clayton County, Georgia*, 590 US \_\_\_\_ (2020). Case law prohibiting discrimination, on the basis of sex, and providing protections for sexual orientation and gender identity in employment.

<sup>2</sup> For the purpose of this policy, UNC Pembroke defines “student” as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with UNC Pembroke.

### **3. Mission Statement**

3.1 UNC Pembroke and its Office of Title IX and Clery Compliance are committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination, harassment, and retaliation for all students, faculty, staff, and campus visitors. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, UNC Pembroke has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation.

3.2 All members of the university community are expected to engage in conduct that contributes to its culture of integrity and honor. The university prohibits its faculty, staff, and students from engaging in any form of discrimination, protected-status harassment, sexual harassment, sexual violence, and retaliation and expects these individuals to refrain from committing acts of discrimination, bias, or sexual violence as these policy violations jeopardize the health and welfare of our campus community.

3.3 In compliance with applicable federal and state legislation and university policy, the university maintains processes to provide redress and remediation to individuals or student groups who believe they have been the victim of these offenses.

3.4 UNC Pembroke values and upholds the equal dignity of all members of its campus community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved

### **4. Rationale for Policy**

4.1 The purpose of this regulation is to provide the campus community with information for filing a complaint of sexual harassment when they feel they have been the victim of such conduct. If someone feels they have been the victim of sexual harassment by university faculty, staff, student, or any visitor to the campus, that person should notify the Office of Title IX and Clery Compliance immediately.

4.2 Anyone with questions regarding a possible incident of sexual harassment and/or wishing to make a complaint relating to sexual harassment (to include sexual violence) or sex-based discrimination may do so by reporting the concern to the Title IX coordinator, Investigator, or a deputy Title IX coordinator: [Sexual Misconduct Reporting Form](http://www.uncp.edu/about-uncp/administration/departments/title-ix-and-clery-compliance/title-ix-sexual-misconduct-reporting-form) is found here: <http://www.uncp.edu/about-uncp/administration/departments/title-ix-and-clery-compliance/title-ix-sexual-misconduct-reporting-form>

4.3 Additionally, anonymous complaints can be made by victims and/or third parties using the university online [Sexual Misconduct Reporting Form](#) or by completing the [Sexual Misconduct Reporting Form \(PDF\)](#). Note that these anonymous complaints could result in an investigation, which may be limited however due to the limited and inadequate information provided.

4.4 Regardless of whether an alleged victim of sex-based discrimination or harassment ultimately files a complaint, if the university knows or has reason to know about possible sex-based discrimination, harassment, or sexual violence, it should review the matter to determine if supportive measures should be provided and if remedial action is warranted. The university should take appropriate steps to eliminate any sex-based discrimination or harassment, prevent its recurrence, and remedy its effects.

### **5. Glossary**

5.1 ***Advisor*** means a person chosen by a party or appointed by UNC Pembroke to accompany the party to meetings related to the Sexual Harassment Resolution Process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

5.2 ***Attorney/Non-Attorney Advocate*** means a person chosen by a Student party, and at the Student's expense, to accompany the student to meetings and hearings related to the Sexual Harassment Resolution Process. The advocate is able to participate in all aspects of the Sexual Harassment Resolution Process. However, the student's Advisor conducts cross-examination during the hearing, if any.

- 5.3 **Business Day** means a day when UNC Pembroke is in normal operation.
- 5.4 **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- 5.5 **Complaint (formal)** means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that UNC Pembroke investigate the allegation.
- 5.6 **Confidential Resource** means an employee who is not a Mandatory Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- 5.7 **Education program or activity** means locations, events, or circumstances where UNC Pembroke exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by UNC Pembroke.
- 5.8 **Employee** means an applicant, probationary State employee, former probationary State employee, Career State employee or former career State employee.
- 5.9 **Final Determination** (also known as Final University Decision; FUD) means a conclusion by preponderance of the evidence or clear and convincing evidence that the alleged conduct occurred and whether it did or did not violate policy. For faculty and student matters, the final determination authorized by the Chancellor or designee concludes the Sexual Harassment Resolution Process. Staff matters may be appealed to the Office of Administrative Hearings for final determination.
- 5.10 **Finding** means a conclusion by preponderance of the evidence that the conduct did or did not occur as alleged.
- 5.11 **Grievance Process**
- 5.11.1 This policy has two grievances processes. While separate and distinct from each other, the sexual harassment prohibited by both policies may be similar.
- 5.11.2 **Formal Grievance Process (FGP)** means a method of formal resolution to address sexual harassment, which complies with the requirements of Title IX (34 CFR Part 106.45). See page 9.
- 5.11.3 **Inclusive Complaint Process (ICP)** means a method of formal resolution to address a broad spectrum of sexual harassment offenses that does not comply with the requirements of Title IX (34 CFR Part 106.45). See page 37.
- 5.12 **Grievance Process Pool** includes any investigators, hearing facilitator, hearing board members, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- 5.13 **Investigator** means the person or persons charged by UNC Pembroke with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- 5.14 **Mandatory Reporters**
- 5.14.1 **Official with Authority (OWA)** means an employee of UNC Pembroke explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of UNC Pembroke and who is obligated by law to share knowledge, notice, and/or reports of sexual harassment, discrimination, and/or retaliation with the Office of Title IX and Clery Compliance.<sup>3</sup>
- 5.14.2 **Mandated Reporter** means an employee of UNC Pembroke who is obligated by this policy to share knowledge, notice, and/or reports of sexual harassment, discrimination, and/or retaliation with the Office of Title IX and Clery Compliance.
- 5.15 **Notice** means that an employee, student, or third-party informs the Office of Title IX and Clery Compliance or other Official with Authority of the alleged occurrence of sexually harassing, discriminatory, and/or retaliatory conduct.

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<sup>3</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- 5.16 **Parties** include the Complainant(s) and Respondent(s), collectively.
- 5.17 **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the UNC Pembroke’s educational programs and activities.
- 5.18 **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- 5.19 **Resolution** means the result of a grievance process:
- 5.19.1 Informal Resolution Process (Mediation)
- 5.19.2 Formal Grievance Process (Title IX sexual harassment cases)
- 5.19.3 Inclusive Complaint Process (Non-Title IX sexual harassment cases)
- 5.20 **Sanction** means a consequence imposed by UNC Pembroke on a Respondent who is found to have violated this policy.
- 5.21 **Sex based Discrimination** is the unlawful distinction, preference, or detriment to someone (e.g., student, employee, applicant for admission or employment) as compared to others that is based on that person’s sex or gender.
- 5.22 **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, dating violence, domestic violence, stalking, and sexual assault. See sections 9 & 70 for greater detail.
- 5.23 **Sexual Misconduct** means sex based offenses to include discrimination, harassment, and sexual violence (dating violence, domestic violence, stalking, and sexual assaults).
- 5.24 **Sexual Harassment Hearing Board Facilitator** (Hearing Facilitator) means the person responsible for post-investigation report communication with the parties, advisors, and witnesses and coordinating hearing procedures.
- 5.24.1 Facilitator for Student Cases: Director of Student Conduct
- 5.24.2 Facilitator for Faculty and Staff Cases: Director of Employee Relations
- 5.25 **Sexual Harassment Hearing Board Members** (Hearing Board members) refers to those faculty and staff who compose the hearing boards and have decision-making authority within the Formal Grievance process (Title IX sexual harassment cases) and the Inclusive Complaint Process (Non-Title IX sexual harassment cases) for faculty, staff, and students. This includes the members of the Hearing Boards and the Campus Appeals Board (student cases). Students on the Campus Hearing Board do not hear sexual harassment cases.
- 5.26 **Sexual Harassment Resolution Process** refers to the supportive measures, investigation, hearing, appeal, and sanctioning of faculty, staff, and student sexual harassment matters.
- 5.27 **Supportive Measures** are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve access to UNC Pembroke’s education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or UNC Pembroke’s educational environment, or deter sexual harassment.
- 5.28 **Title IX Coordinator** is the official designated by UNC Pembroke to ensure compliance with Title IX and UNC Pembroke’s Sexual Harassment Resolution Process. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- 5.29 **Title IX Team** refers to the Title IX Coordinator, investigator, any deputy coordinators, and any member of the Grievance Process Pool.
- 5.30 **UNC Pembroke** means a postsecondary education program that is a recipient of federal funding and required by federal law to address and remedy allegations of sexual harassment by faculty, staff, students, and visitors to campus.

## **6. Sexual Harassment Investigations**

6.1 A sexual harassment investigation is used to ensure safety in the campus community and equity in educational programs and processes. Any member of the campus community who has experienced sexual harassment or if anyone knows of any member of the campus community who may have experienced sexual harassment may initiate the Sexual Harassment Resolution Process. Any member of the campus community who has experienced an alleged sexual harassment offense will be given information and empowerment to make informed decisions throughout the resolution process and will be the driving force behind any sexual harassment investigation, if any. During the investigation and possible adjudication, both the Complainant and Respondent will be accorded due process, equity, and fairness from the Title IX Team.

6.2 Filing a Complaint: Anyone who would like to make a complaint based on a violation of the Sexual Harassment Policy may contact the university's Title IX coordinator, Deputy Title IX coordinators, the CARE Team, CAPS, Student Health Services, campus law enforcement, and/or the office of the director of student conduct. Reports may also be made via the Sexual Misconduct Reporting form online at <http://www.uncp.edu/about-uncp/administration/departments/title-ix-and-clery-compliance/title-ix-sexual-misconduct-reporting-form>

6.3 If a criminal complaint is filed in addition to a complaint with UNC Pembroke, the Title IX coordinator will coordinate with law enforcement so that the resolution process does not interfere with the integrity or the timing of the law enforcement investigation. However, UNC Pembroke will not wait for the conclusion of any criminal investigation or proceedings before continuing with its own investigation. UNC Pembroke may agree to temporarily delay its investigation while law enforcement gathers evidence. In the event of such a delay, UNC Pembroke will offer interim and supportive measures as needed to protect all parties and the campus community. UNC Pembroke will promptly resume and complete its investigation once it learns it will no longer interfere with law enforcement's criminal investigation or the Title IX coordinator deems it appropriate to do so.

6.4 The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

## **7. Grievance Process Overview**

7.1 To comply with the requirements of Title IX, UNC Pembroke has created two grievance processes; the facts related to the allegation(s) determine which grievance process is to be utilized.

7.2 **The Formal Grievance Process (FGP)** applies **only** to qualifying allegations of sexual harassment as defined by Title IX (including dating violence, domestic violence, stalking, and sexual assault, as defined by the Clery Act) involving students, staff, or faculty members.

7.3 **The Inclusive Complaint Process (ICP)** applies to all allegations of sex-based harassment, discrimination, and sexual violence (as defined by the Clery Act) involving students, faculty, staff, or third parties when jurisdiction does not fall within Title IX, and as determined by the Title IX Coordinator.

## **8. Notice/Complaint of Sexual Harassment**

8.1 Upon receipt of a complaint or notice to the Office of Title IX and Clery Compliance of an alleged violation of the Policy, the Title IX Coordinator<sup>4</sup> initiates a prompt initial assessment to determine the next steps to be taken.

8.2 The Title IX Coordinator will initiate at least one of three responses:

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<sup>4</sup> Anywhere this regulation indicates "Title IX Coordinator," UNC Pembroke may substitute a trained designee.

- 8.2.1 Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- 8.2.2 An informal resolution (upon submission of a formal complaint); and/or
- 8.2.3 A Grievance Process: investigation and a hearing via the Formal Grievance Process (upon submission of a formal complaint) or the Inclusive Complaint Process.
- 8.3 Once the Office of Title IX and Clery Compliance receives notice of alleged sexual harassment offense(s), the Title IX Coordinator will reach out to person allegedly experiencing sexual harassment to offer supportive measures regardless of their intent to pursue or not pursue an investigation and adjudication of the alleged sexual harassment offense(s).
- 8.4 UNC Pembroke uses the investigation and a grievance process to determine whether or not the Policy has been violated. If so, under the Formal Grievance Process, UNC Pembroke will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to the harassment or discrimination, their potential recurrence, or their effects.



## **9. FORMAL GRIEVANCE PROCESS (FGP; Compliant with Title IX)**

### **10. FGP Initial Assessment**

10.1 Following receipt of notice or a complaint of an alleged violation of the Sexual Harassment Policy, the Title IX Coordinator<sup>5</sup> engages in an initial assessment, typically within one to five business days.

10.2 The steps in an initial assessment can include:

10.2.1 If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.

10.2.2 If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.

10.2.3 If a formal complaint is received, the Title IX Coordinator assesses its sufficiency under Title IX and works with the Complainant to make sure it is correctly completed.

10.3 The Title IX Coordinator reaches out to the Complainant to offer supportive measures.

10.4 The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor and an attorney/non-attorney advocate.

10.5 The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process:

10.5.1 If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implement accordingly. If no Formal Grievance Process is initiated, the Complainant can elect to initiate one later.

10.5.2 If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.

10.5.3 If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:

10.5.4 If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:

10.5.4.a. an incident, and/or

10.5.4.b a pattern of alleged misconduct, and/or

10.5.4.c a culture/climate issue, based on the nature of the complaint.

10.5.5. If the misconduct alleged falls outside the scope of Title IX, the Title IX Coordinator will dismiss the complaint and refer the matter for resolution under the Inclusive Complaint Process (ICP). Please note that dismissing a complaint under Title IX is just procedural, and does not limit UNC Pembroke's authority to address a complaint with another more appropriate process and remedies.

### **11. Violence Risk Assessment**

11.1 In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Emergency Health and Safety Committee<sup>6</sup> (EHS) as part of the initial assessment.

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<sup>5</sup> If circumstances require, the Chancellor or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

<sup>6</sup> The Emergency Health and Safety committee coordinates university resources to assist students who are at risk academically or who exhibit maladaptive behavior or signs of emotional distress; they identify students who have either experienced personal loss or failures while enrolled or who may be a danger to themselves or others within the UNCP community, and develop intervention plans for each individual student based on the problems and concerns identified.

- 11.2 A VRA can aid in ten critical and/or required determinations, including:
- 11.2.1 Emergency removal of a Respondent on the basis of **immediate threat to physical health/safety**;
  - 11.2.2 Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
  - 11.2.3 Whether to put the investigation on the footing of incident and/or pattern and/or climate;
  - 11.2.4 To help identify potential predatory conduct;
  - 11.2.5 To help assess/identify grooming behaviors;
  - 11.2.6 Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
  - 11.2.7 Whether to permit a voluntary withdrawal from UNC Pembroke by the Respondent;
  - 11.2.8 Whether to communicate with a transfer university about a Respondent;
  - 11.2.9 Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
  - 11.2.10 Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata (ban) is needed.
- 11.3 Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.
- 11.4 VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or threat assessment team.
- 11.5 A VRA authorized by the Title IX Coordinator should occur in collaboration with UNC Pembroke's Emergency Health and Safety Committee. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.
- 11.6 A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.
- 11.7 More about the UNC Pembroke's process for VRA can be found below in Appendix B.

## **12. Dismissal: Mandatory or Discretionary<sup>7</sup>**

- 12.1 After receiving a former complaint and initiating an initial assessment, the Investigator must dismiss the formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:
- 12.1.1 The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Sexual Harassment Policy, even if proved; and/or
  - 12.1.2 The conduct did not occur in an educational program or activity controlled by UNC Pembroke (including buildings or property controlled by recognized student organizations), and/or UNC Pembroke does not have control of the Respondent; and/or
  - 12.1.3 The conduct did not occur against a person in the United States; and/or
  - 12.1.4 At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of UNC Pembroke.
- 12.2 After receiving a formal complaint and initiating an initial assessment, the Investigator may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:
- 12.2.1 A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
  - 12.2.2 The Respondent is no longer enrolled in or employed by UNC Pembroke; or

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<sup>7</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

12.2.3 Specific circumstances prevent UNC Pembroke from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

12.3 Upon any dismissal, UNC Pembroke will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

12.4 This dismissal decision is appealable by any party, within 7 days of decision, to the Title IX Coordinator. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

12.5 If the Title IX Coordinator is the Investigator, appeals should be filed with the Title IX Deputy Coordinator for Student Affairs or Human Resources, respectively.

12.6 A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

### **13. Counterclaims**

13.1 UNC Pembroke is obligated to ensure that the grievance process is not abused for retaliatory purposes.

13.2 UNC Pembroke permits the filing of counterclaims but uses the initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, made for purposes of retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

13.3 Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

13.4 Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.

13.5 When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

### **14. Right to an Attorney/Non-Attorney Advocate**

14.1 Student parties may also have an attorney/non-attorney advocate<sup>8</sup> of their choice present with them for all meetings and interviews during the resolution process, if they so choose. The parties may select whomever they wish to serve as their advocate so long as the advocate is eligible and available.<sup>9</sup>

### **15. Right to an Advisor**

15.1 The parties may each have an Advisor<sup>10</sup> of their choice present with them for all meetings, interviews, and hearings during the resolution process, if they so choose. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>11</sup>

15.2 Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Hearing Board.

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<sup>8</sup> This could include an attorney, advocate, or support person.

<sup>9</sup> “Available” means the party cannot insist on an attorney/non-attorney advocate who simply doesn’t have inclination, time, or availability. Also, the advocate cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

<sup>10</sup> This could include an attorney, advocate, or support person.

<sup>11</sup> “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

15.3 The Title IX Coordinator will make the final decision as to the potential bias and conflict-of-interest of an Advisor.

**16. Who Can Serve as an Advisor**

16.1 The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the UNC Pembroke community.

16.2 The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from UNC Pembroke, the Advisor will be trained by UNC Pembroke and be familiar with UNC Pembroke's resolution process.

16.3 If the parties choose an Advisor from outside the pool of those identified by UNC Pembroke, the Advisor may not have been trained by UNC Pembroke and may not be familiar with UNC Pembroke policies and procedures.

16.4 Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

**17. Advisor's Role in Meetings and Interviews**

17.1 The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

17.2 UNC Pembroke cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, UNC Pembroke is not obligated to provide an attorney.

17.3 Where applicable under state law or UNC Pembroke policy, Advisors or attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings. Although Recipient prefers to hear from parties directly, in these cases, parties are entitled to have evidence provided by their chosen representatives.

**18. Advisors in Hearings/UNC Pembroke-Appointed Advisor**

18.1 Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for the hearing, UNC Pembroke will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

18.2 A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, UNC Pembroke will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Hearing Board members during the hearing.

**19. Pre-Interviews Meetings**

19.1 Advisors may request to meet with the Investigator conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and UNC Pembroke's policies and procedures.

**20. Advisor Violations of UNC Pembroke Policy**

20.1 All Advisors are subject to the same UNC Pembroke policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings.

20.2 The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. The Advisor may speak on behalf of their advisee and consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

20.3 Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

**21. Sharing Information with the Advisor**

21.1 UNC Pembroke expects that the parties may wish to have UNC Pembroke share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

21.2 UNC Pembroke also provides a consent form that authorizes UNC Pembroke to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before UNC Pembroke is able to share records with an Advisor.

21.3 If a party requests that all communication be made through their Advisor, UNC Pembroke will not comply with that request.

**22. Privacy of Records Shared with Advisor**

22.1 Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by UNC Pembroke. UNC Pembroke may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the UNC Pembroke's privacy expectations.

**23. Expectations of an Advisor**

23.1 UNC Pembroke generally expects an Advisor to adjust their schedule to allow them to attend UNC Pembroke meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

23.2 UNC Pembroke may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting or interview by telephone, video conferencing, or other similar technologies as may be convenient and available.

**24. Expectations of the Parties with Respect to Advisors**

24.1 A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator (or as soon as possible if a more expeditious meeting is necessary or desired).

24.2 The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to

inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

## **25. Informal Resolution Processes**

25.1 Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with UNC Pembroke policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. UNC Pembroke encourages parties to discuss any sharing of information with their Advisors before doing so.

### **25.2 Informal Resolution**

25.2.1 Informal Resolution can include three different approaches:

25.2.1.1 When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.

25.2.1.2 When the parties agree to resolve the matter through an alternate resolution mechanism as described below, (including mediation, restorative practices, etc.), usually before a formal investigation takes place; see discussion below.

25.2.1.3 When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion below.

25.3 To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution, should contact the Title IX Coordinator.

25.4 It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

25.5 Prior to implementing Informal Resolution, UNC Pembroke will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by UNC Pembroke.

25.6 UNC Pembroke will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

## **26. Informal Resolution: Alternate Resolution Mechanism**

26.1 Alternate Resolution is an informal mechanism (including mediation or restorative practices, etc.) by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to an Alternate Resolution mechanism.

26.2 The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

26.2.1 The parties' amenability to Alternate Resolution;

26.2.2 Likelihood of potential resolution, taking into account any power dynamics between the parties;

26.2.3 The parties' motivation to participate;

26.2.4 Civility of the parties;

26.2.5 Results of a violence risk assessment/ongoing risk analysis;

26.2.6 Disciplinary history;

26.2.7 Whether an emergency removal is needed;

26.2.8 Skill of the Alternate Resolution facilitator with this type of allegation;



- 26.2.9 Complaint complexity;
- 26.2.10 Emotional investment/capability of the parties;
- 26.2.11 Rationality of the parties;
- 26.2.12 Goals of the parties;
- 26.2.13 Adequate resources to invest in Alternate Resolution (time, staff, etc.)
- 26.3 The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions.
- 26.4 Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

## **27. Informal Resolution: Respondent Accepts Responsibility for Alleged Violations**

- 27.1 The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.
- 27.2 If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and UNC Pembroke are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of UNC Pembroke policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.
- 27.3 This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.
- 27.4 When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **28. Informal Resolution: Negotiated Resolution**

- 28.1 The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and UNC Pembroke.
- 28.2 Negotiated Resolutions are not appealable.

## **29. Grievance Process Pool**

- 29.1 The Grievance processes rely on a pool of officials (“Pool”) to carry out the process.
- 29.2 The list of members and a description of the Pool can be found at [\[link\]](#).
- 29.3 Members of the Pool are trained annually in all aspects of the resolution process and can serve in any of the following roles, at the direction of the Title IX Coordinator:
  - 29.3.1 To provide appropriate intake of and initial guidance pertaining to complaints
  - 29.3.2 To act as Advisors to the parties
  - 29.3.3 To facilitate Informal Resolution
  - 29.3.4 To serve as a Hearing Board member
  - 29.3.5 To serve on an Appeal Board
- 29.4 The Chancellor, in consultation with the Title IX Coordinator, appoints the Pool’s Hearing Board members, which acts with independence and impartiality.
- 29.5 Pool members receive annual training organized by the Title IX Coordinator, including a review of UNC Pembroke policies and procedures as well as applicable federal and state laws and regulations so

that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

29.6 Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the Recipient can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

29.7 The Pool members receive annual training jointly or specific to their role. This training includes, but is not limited to:

29.7.1 The scope of the UNC Pembroke's Sexual Harassment Policy and Regulation

29.7.2 How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability

29.7.3 Implicit bias

29.7.4 Disparate treatment and impact

29.7.5 Reporting, confidentiality, and privacy requirements

29.7.6 Applicable laws, regulations, and federal regulatory guidance

29.7.7 How to implement appropriate and situation-specific remedies

29.7.8 How to investigate in a thorough, reliable, and impartial manner

29.7.9 How to uphold fairness, equity, and due process

29.7.10 How to weigh evidence

29.7.11 How to conduct questioning

29.7.12 How to assess credibility

29.7.13 Impartiality and objectivity

29.7.14 Types of evidence

29.7.15 Deliberation

29.7.16 How to render findings and generate clear, concise, evidence-based rationales

29.7.17 The definitions of all offenses

29.7.18 How to apply definitions used by UNC Pembroke with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy

29.7.19 How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes

29.7.20 How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

29.7.21 Any technology to be used

29.7.22 Issues of relevance of questions and evidence

29.7.23 Issues of relevance to create an investigation report that fairly summarizes relevant evidence

29.7.24 How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

29.7.25 Recordkeeping

29.8 All Pool members are required to attend annual training. Specific training is also provided for Hearing Board members and Appeal Board members.

29.9 The Grievance Process Pool includes:

29.9.1 2 Hearing Board Chairs, voting members

29.9.2 At least 6 members of Academic Affairs

29.9.3 At least 6 members of the administration/staff

29.9.4 At least 1 member from Human Resources

29.9.5 At least 3 representatives from Athletics

29.10 Pool members are usually appointed to two-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.



**30. Formal Grievance Process: Notice of Investigation and Allegations**

30.1 The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

30.2 The NOIA will include:

30.2.1 A meaningful summary of all allegations,

30.2.2 The identity of the involved parties (if known),

30.2.3 The precise misconduct being alleged,

30.2.4 The date and location of the alleged incident(s) (if known),

30.2.5 The specific policies implicated,

30.2.6 A description of the applicable procedures,

30.2.7 A statement of the potential sanctions/responsive actions that could result,

30.2.8 A statement that UNC Pembroke presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,

30.2.9 A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,

30.2.10 A statement about UNC Pembroke’s policy on retaliation,

30.2.11 Information about the privacy of the process,

30.2.12 Information on the need for each party to have an Advisor of their choosing for the specific responsibility of cross-examination during a hearing, if necessary, but that the Advisor can attend all meetings and interviews with the party,

30.2.13 Information on suggestions for ways to identify an Advisor,

30.2.14 Information that student parties may have an attorney/non-attorney advocate of their choosing for all meetings, interviews, and hearing,

30.2.15 A statement informing the parties that UNC Pembroke’s policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,

30.2.16 Detail on how the party may request disability accommodations during the interview process,

30.2.17 A link to UNC Pembroke’s VAWA Brochure

30.2.18 The name of the Investigator, along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and

30.2.19 An instruction to preserve any evidence that is directly related to the allegations.

30.3 Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various alleged offenses.

30.4 Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official UNC Pembroke records, or emailed to the parties’ UNC Pembroke-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

**31. Resolution Timeline**

31.1 UNC Pembroke will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

### **32. Ensuring Impartiality**

32.1 Any individual materially involved in the administration of the resolution process (including the Title IX Coordinator, Investigator, Hearing Facilitator, and Hearing Board Members) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

32.2 The Title IX Coordinator will ensure the Investigator's impartiality by making sure there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the university's Chief of Staff.

32.3 The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

32.4 UNC Pembroke operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof: Preponderance of the Evidence.

32.5 During the resolution process, UNC Pembroke will put a hold on a Respondent's account, which restricts the ability to register for class(es) and obtain a transcript.

### **33. Investigation Timeline**

33.1 Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, intervening holidays and university closures, etc.

33.2 UNC Pembroke will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **34. Delays in the Investigation Process and Interactions with Law Enforcement**

34.1 UNC Pembroke may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

34.2 UNC Pembroke will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. UNC Pembroke will promptly resume its investigation and resolution process as soon as feasible. During such a delay, UNC Pembroke will implement supportive measures as deemed appropriate.

34.3 UNC Pembroke action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **35. FGP: Investigation Process**

35.1 All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

35.2 All parties have a full and fair opportunity, through the investigation process, to suggest

witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

35.3 The Investigator typically takes the following steps, if not already completed (not necessarily in this order):

35.3.1 Determine the identity and contact information of the Complainant

35.3.2 In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures

35.3.3 Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated

35.3.4 Conduct a prompt initial assessment to determine if the allegations indicate a potential policy violation

35.3.5 Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties

35.3.6 Meet with the Complainant to finalize their interview/statement, if necessary

35.3.7 Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations

35.3.7.1 Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party

35.3.7.2 Notice should also inform students and any other party of their right to have an attorney/non-attorney advocate present for all meetings attended by the parties.

35.3.8 Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meeting.

35.3.9 Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible

35.3.10 When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose

35.3.11 Interview all available, relevant witnesses and conduct follow-up interviews as necessary

35.3.12 Allow each party the opportunity to suggest witnesses and questions they wish the Investigator to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.

35.3.13 Complete the investigation promptly and without unreasonable deviation from the intended timeline

35.3.14 Provide regular status updates to the parties throughout the investigation.

35.3.15 Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding

35.3.16 Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included

35.3.17 Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which UNC Pembroke does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

35.3.18 The Investigator may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses

35.3.19 The Investigator will incorporate relevant elements of the parties' written responses into the final

investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator should document all rationales for any changes made after the review and comment period

35.3.20 The Investigator shares the report with the Title IX Coordinator for review and feedback

35.3.21 The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

### **36. Role and Participation of Witnesses in the Investigation**

36.1 Witnesses (as distinguished from the parties) who are employees of UNC Pembroke are expected to cooperate with and participate in UNC Pembroke's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

36.2 Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator determines that timeliness or efficiency dictate a need for remote interviewing. UNC Pembroke will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

36.3 Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator, though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at the hearing, their written statement shall not be used as evidence.

### **37. Recording of Interviews**

37.1 No unauthorized audio or video recording of any kind is permitted during investigation meetings

37.2 The Investigator may elect to audio and/or video record interviews.

### **38. Evidentiary Considerations in the Investigation**

38.1 The investigation does not consider:

38.1.1 incidents not directly related to the possible violation, unless they evidence a pattern;

38.1.2 the character of the parties; or

38.1.3 questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

### **39. Referral for Hearing**

39.1 Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Investigator, in consultation with the Title IX Coordinator, will refer the matter for a hearing.

39.2 The hearing cannot be less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Hearing Board – unless all parties, Hearing Facilitator, and the Hearing Board Chair agree to an expedited timeline.

39.3 The Hearing Facilitator and Hearing Board Chair will select appropriate Hearing Board members from the Grievance Process Pool depending on whether the Respondent is an employee or a student.

Allegations involving student-employees in the context of their employment will be directed to the appropriate Hearing Board depending on the context and nature of the alleged misconduct.

#### **40. Sexual Harassment Hearing Boards and their Composition**

40.1 There are two Sexual Harassment Hearing Boards.

40.1.1 **Students:** The Office of Student Conduct's Conduct Hearing Board will assume the role of a Sexual Harassment Hearing Board for the Office of Title IX and Clery Compliance and hear all sexual harassment matters concerning student on student conduct (Title IX and non-Title IX cases).

40.1.2 The Hearing Facilitator for the Student Sexual Harassment Hearing Board is the Director of Student Conduct, Office of Student Affairs.

40.1.3 **Faculty and Staff:** The Faculty and Staff Sexual Harassment Hearing Board will hear all sexual harassment matters concerning faculty and staff (Title IX and non-Title IX cases).

40.1.4 The Hearing Facilitator for the Faculty and Staff Sexual Harassment Hearing Board is the Director of Employee Relations, Office of Human Resources.

40.2 The Chancellor will appoint all members to the Sexual Harassment Hearing Boards and designate a Hearing Board Chair for each board.

40.3 Hearing Board members will not have had any previous involvement with the investigation. The Hearing Facilitator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

40.4 Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as a Hearing Board member. Those who are serving as Advisors for any party may not serve as Hearing Board member in that matter.

40.5 The Title IX Coordinator may not serve as a Hearing Board member or Hearing Board Chair in the matter but may serve as an alternate Hearing Facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. The hearing will convene at a time determined by the Hearing Board Chair or designee.

#### **41. Evidentiary Considerations in the Hearing**

41.1 Any evidence that the Hearing Board Chair determines is relevant and credible may be considered. The hearing does not consider:

41.1.1 incidents not directly related to the possible violation, unless they evidence a pattern;

41.1.2 the character of the parties; or

41.1.3 questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

41.2 Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming UNC Pembroke uses a progressive discipline system. This information is only considered at the sanction stage of the process, and is not shared until then.

41.3 The parties may each submit a written impact statement prior to the hearing for the consideration of the Hearing Board members at the sanction stage of the process when a determination of responsibility is reached.

41.4 After post-hearing deliberation, the Hearing Board members render a determination of responsibility based on preponderance of the evidence; whether it is more likely to be true than not true that the Respondent violated the Policy as alleged.

## **42. Notice of Hearing**

42.1 No less than ten (10) business days prior to the hearing, the Hearing Facilitator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

42.2 The notice will contain:

42.2.1 A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.

42.2.2 The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.

42.2.3 Any technology that will be used to facilitate the hearing.

42.2.4 Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Hearing Board members and parties to see and hear a party or witness answering questions. Such a request must be raised with the Hearing Facilitator at least five (5) business days prior to the hearing.

42.2.5 A list of all those who will attend the hearing, along with an invitation to object to any Hearing Board member on the basis of demonstrated bias. This must be raised with the Hearing Facilitator at least two (2) business days prior to the hearing.

42.2.6 Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.

42.2.7 A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Hearing Board. For compelling reasons, the Hearing Board Chair may reschedule the hearing.

42.2.8 Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. If the party does not have an Advisor for the hearing, (s)he must notify the Hearing Facilitator who will notify the Title IX Coordinator, who will appoint one. Each party must have an Advisor present at the hearing for the specific responsibility of cross-examination. There are no exceptions.

42.2.9 A copy of all the materials provided to the Hearing Board about the matter, unless they have been provided already.<sup>12</sup>

42.2.10 An invitation to each party to submit to the Hearing Facilitator an impact statement pre-hearing that the Hearing Board will review during any sanction determination.

42.2.11 An invitation to contact the Hearing Facilitator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) business days prior to the hearing.

42.3 Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by UNC Pembroke and remain within the 60-90 business day goal for resolution.

42.4 In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

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<sup>12</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.



#### **43. Alternative Hearing Participation Options**

43.1 If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Hearing Facilitator at least five (5) business days prior to the hearing.

43.2 The Hearing Facilitator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Hearing Facilitator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

#### **44. Pre-Hearing Preparation**

44.1 The Hearing Facilitator, after any necessary consultation with the parties, Investigator and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties and their Advisor at least ten (10) business days prior to the hearing.

44.2 Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator or have proffered a written statement or answered written questions, unless all parties and the Hearing Board Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Hearing Board Chair do not assent to the admission of evidence newly offered at the hearing, the Hearing Board Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

44.3 The parties will be given a list of the names of the Hearing Board members at least five (5) business days in advance of the hearing. All objections to any Hearing Board member must be raised in writing, detailing the rationale for the objection, and must be submitted to the Hearing Facilitator as soon as possible and no later than one day prior to the hearing. The Hearing Board member will only be removed if the Hearing Facilitator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

44.4 The Hearing Facilitator will give the Hearing Board a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Hearing Board member who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Hearing Board member is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Hearing Facilitator as soon as possible.

44.5 During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Hearing Facilitator and/or Hearing Board Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Hearing Facilitator.

#### **45. Pre-Hearing Meetings**

45.1 The Hearing Board Chair may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties or their Advisors) wish to ask or discuss at the hearing, so that the Hearing Board Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Hearing Board Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

45.2 The Hearing Board Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator in the investigation report or during the hearing.

45.3 At each pre-hearing meeting with a party and their Advisor, the Hearing Board Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator may be argued to be relevant. The Hearing Board Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Hearing Board Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

45.4 The pre-hearing meeting(s) will not be recorded.

#### **46. Hearing Procedures**

46.1 At the hearing, the Hearing Board members have the authority to hear and make determinations on all allegations of harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Sexual Harassment policy.

46.2 Student parties are limited to two Advisors of their choosing; the Attorney/Non-Attorney Advocate qualifies as an Advisor, a support person qualifies as an Advisor, and any other person can qualify as an Advisor. While the Advisor can accompany the party to every meeting and interview with the Title IX Team, their specific and mandatory role is to conduct cross-examination during the hearing.

46.3 Faculty and Staff are limited to one Advisor of their choosing. While the Advisor can accompany the party to every meeting and interview with the Title IX Team, their specific and mandatory role is to conduct cross-examination during the hearing.

46.4 Participants at the hearing can include the Hearing Board Chair, any additional board members, the Hearing Facilitator, the Investigator who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent<sup>13</sup>), an Advisor to each party, an attorney/non-attorney advocate (only for students and as an Advisor), any called witnesses, and anyone providing authorized accommodations or assistive services. If a party request the presence of a Support Person, the Support Person assumes the role of Advisor and must conduct cross-examination of the parties and any witnesses. The Title IX Coordinator may attend the hearing.

46.5 The Hearing Board Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information should respond to questions on their own behalf.

46.6 The Hearing Board Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Board members and the parties and the witnesses will then be excused.

#### **47. Joint Hearings**

47.1 In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

47.2 However, the Hearing Facilitator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

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<sup>13</sup> Subject to UNC Pembroke's Code of Organizational Conduct.



#### **48. The Order of the Hearing – Introductions and Explanation of Procedures**

48.1 The Hearing Board Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of a Hearing Board member on the basis of bias or conflict of interest. The Hearing Board Chair will rule on any such challenge unless the Hearing Board Chair is the individual who is the subject of the challenge, in which case the Hearing Facilitator will review and decide the challenge.

48.2 The Hearing Board Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by the Hearing Facilitator. The Hearing Facilitator may also attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

#### **49. Investigator Presents the Final Investigation Report**

49.1 The Investigator will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Board members and the parties (through their respective Advisors). The Investigator will be present during the entire hearing process, but not during deliberations.

49.2 Neither the parties nor the Hearing Board members should ask the Investigator's opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Hearing Board Chair will direct that it be disregarded.

#### **50. Testimony and Questioning**

50.1 Once the Investigator presents the investigative report and is questioned, the parties and witnesses may provide relevant information in turn and in the order determined by the Hearing Board Chair. The parties/witnesses will submit to questioning by the Hearing Board members and then by the parties through their Advisors ("cross-examination").

50.2 All questions are subject to a relevance determination by the Hearing Board Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default method, but other means of submission may be permitted by the Hearing Board Chair upon request if agreed to by all parties and the Hearing Board Chair). The proceeding will pause to allow the Hearing Board Chair to consider it, (and state it if it has not been stated aloud), and the Hearing Board Chair will determine whether the question will be permitted, disallowed, or rephrased.

50.3 The Hearing Board Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Hearing Board Chair so chooses. The Hearing Board Chair will then state the decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Hearing Board Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

50.4 The Hearing Board Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Board Chair has final say on all questions and determinations of relevance. The Hearing Board Chair may consult with legal counsel on any questions of admissibility. The Hearing Board Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Hearing Board Chair has ruled on a question.

50.5 If the parties raise an issue of bias or conflict of interest of an Investigator or Hearing Board member at the hearing, the Hearing Board Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Hearing Board Chair should not permit irrelevant questions that probe for bias.

50.6 If the hearing is conducted via online service (e.g., WebEx, Zoom, etc.), the parties, Advisors, and anyone who provides testimony must have their computer/tablet camera in operation during the hearing.

## **51. Refusal to Submit to Cross-Examination and Inferences**

51.1 If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the hearing, or they attend, but refuse to participate in questioning, then the Hearing Board members may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Hearing Board members must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

51.2 If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by Hearing Board members, as distinguished from questions posed by Advisors through cross-examination.

51.3 If the Respondent chooses not to submit to cross-examination at the hearing, either because they do not attend the hearing or they attend but refuse to participate in questioning, the Complainant must still submit to cross-examination by an Advisor representing the Respondent for the Complainant's statement and testimony to be considered by the Hearing Board.

51.4 The Hearing Board members may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

51.5 If charges of policy violations other than sexual harassment are considered at the same hearing, the Hearing Board members may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

51.6 If a party's Advisor of choice and/or the attorney/non-attorney advocate refuses to comply with UNC Pembroke's established rules of decorum for the hearing, the Hearing Board Chair may require the Advisor and/or attorney/no-attorney advocate to leave the hearing and require the party to use a different Advisor. If a UNC Pembroke-provided Advisor refuses to comply with the rules of decorum, UNC Pembroke may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

## **52. Recording Hearings**

52.1 Hearings (but not deliberations) are recorded by UNC Pembroke for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

52.2 For purposes of appeal, the Hearing Board members, the parties, their Advisors and/or attorney/non-attorney advocates, and appropriate administrators of UNC Pembroke will be permitted to listen to the recording in a controlled environment determined by the Hearing Facilitator. No person will be given or be allowed to make a copy of the recording without permission of the Hearing Facilitator.

## **53. Deliberation, Decision-making, and Standard of Proof**

53.1 The Hearing Board members will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question.

- 53.1.1 A simple majority vote is required to determine the finding.
- 53.1.2 The standard of proof for all three Hearing Boards is preponderance of the evidence.
- 53.1.3 The Hearing Facilitator may be invited to attend the deliberation by the Hearing Board Chair.
- 53.2 **Student Hearing Outcomes:** Sexual harassment hearings regarding student on student misconduct will result in a finding of responsible or not responsible. If responsible, the Hearing Board also makes a determination of sanctions, if any.
- 53.3 **Faculty Hearing Outcomes:** Sexual harassment hearings regarding faculty misconduct will result in a finding of responsible or not responsible. If responsible, the issue of sanction(s) is submitted to the Vice-Chancellor for Academic Affairs for consideration of an appropriate disciplinary sanction.
- 53.4 **Staff Hearing Outcomes:** Sexual harassment hearings regarding staff will result in a finding of responsible or not responsible. If responsible, the issue of sanction(s) is submitted to the Office of Human Resources' Director of Employee Relations to work collaboratively with the Respondent's supervisor to determine an appropriate sanction. If the Respondent's supervisor was the Complainant, the Director of Employee Relations will work with the Complainant's supervisor to determine an appropriate sanction.
- 53.5 When there is a finding of responsibility on one or more of the allegations, the Hearing Board members and the Office of Human Resources, respectively, may then consider the previously submitted party impact statements in determining appropriate sanction(s).
- 53.6 The Hearing Facilitator will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Hearing Board members and the Office of Human Resources, respectively and at their discretion, may, consider the statements, but they are not binding.
- 53.7 The Hearing Board members and the Office of Human Resources, respectively, will review the statements and any pertinent conduct history provided by the Hearing Facilitator and/or Title IX Coordinator and will determine the appropriate sanction(s).
- 53.8 The Hearing Board Chair and Office of Human Resources, respectively, will then prepare a written deliberation statement and deliver it to the Hearing Facilitator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.
- 53.9 This report is typically three (3) to five (5) pages in length and must be submitted to the Hearing Facilitator within two (2) business days of the end of deliberations, unless the Hearing Facilitator grants an extension. If an extension is granted, the Hearing Facilitator will notify the parties.

#### **54. Notice of Outcome**

- 54.1 Using the deliberation statement, the Hearing Facilitator will work with the Hearing Board Chair and the Office of Human Resources, respectively, to prepare a Notice of Outcome. The Hearing Facilitator will then share the Notice of Outcome letter, including the final determination, rationale, and any applicable sanction(s) with the parties, their Advisors, and attorney/non-attorney advocate within 7 business days of receiving the deliberation statement.
- 54.2 The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official UNC Pembroke records, or emailed to the parties' UNC Pembroke-issued email or otherwise approved account.
- 54.3 Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.
- 54.4 The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by UNC Pembroke from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.
- 54.5 The Notice of Outcome will specify the following:
- 54.5.1 finding on each alleged policy violation;

- 54.5.2 the findings of fact that support the determination;
  - 54.5.3 conclusions regarding the application of the relevant policy to the facts at issue;
  - 54.5.4 a statement of, and rationale for, the result of each allegation to the extent UNC Pembroke is permitted to share such information under state or federal law;
  - 54.5.5 any sanctions issued which UNC Pembroke is permitted to share according to state or federal law; and
  - 54.5.6 any remedies provided to the Complainant designed to ensure access to UNC Pembroke's educational or employment program or activity, to the extent UNC Pembroke is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).
- 54.6 The Notice of Outcome will also include information on when the results are considered by UNC Pembroke to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

## **55. Remedies for Students**

- 55.1 *Official Warning*: A written reprimand for violation of specified regulations, including a warning that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.
- 55.2 *Restitution*: Appropriate reimbursement for a wrongful act, which resulted in loss, damage, or actual expenses incurred by the University.
- 55.3 *Educational Assignments*: This sanction requires that the student complete an assigned task with the purpose of educating the student about the implications, effects, or dangers of their behavior. These assignments can include, but are not limited to, work assignments, mandatory mentoring, restorative justice mediations, or other related discretionary assignments as provided by the hearing officer or hearing board.
- 55.4 *Area Restrictions*: Exclusion of a student for a designated time period from a facility, such as the gym, the University Center, the residence halls, or other areas on campus.
- 55.5 *Loss of Privileges*: Denial of specified privileges for a designated period of time. This includes, but is not limited to, loss of position in club(s) or student organization(s), suspension from athletic team or performing group, prohibition from participation in co-curricular activities, or loss of privilege to park or drive on campus.
- 55.6 *Exclusion from On-Campus Residence*: Defined as removing the student's privilege to apply for and/or live in a residential facility for a specified period of time. This sanction should be imposed if the offense(s) for which the student was found responsible merits the student's exclusion from on-campus residency. This decision would be based on evidence that the student's continued presence would interfere with the living/learning atmosphere within the residential community.
- 55.7 *Residence Facility Relocation*: Removal of a student from his/her present room or from that residence facility and assigning that student to another room or another residence facility. This would include considerations relative to housing options.
- 55.8 *Eviction from an On-Campus Residential Facility*: Removal of a resident from an on-campus residence for a specified period of time. Students who are evicted from an on-campus residential facility are prohibited from returning to or visiting in any on-campus residential facility. Students evicted will not be eligible for refund of unused room or board.

## **56. Sanctions**

- 56.1 Factors considered when determining a sanction/responsive action may include, but are not limited to:
- 56.1.1 The nature, severity of, and circumstances surrounding the violation(s)
  - 56.1.2 The Respondent's disciplinary history
  - 56.1.3 Previous allegations or allegations involving similar conduct

- 56.1.4 The need for sanctions/responsive actions to bring an end to the harassment and/or retaliation
- 56.1.5 The need for sanctions/responsive actions to prevent the future recurrence of harassment and/or retaliation
- 56.1.6 The need to remedy the effects of the harassment and/or retaliation on the Complainant and the community
- 56.1.7 The impact on the parties
- 56.1.8 Any other information deemed relevant by the Hearing Board members
- 56.2 The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.
- 56.3 The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.
- 56.4 **Student Sanctions:** The following are the usual sanctions that may be imposed upon students or organizations singly or in combination<sup>14</sup>:
- 56.4.1 *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any UNC Pembroke policy, procedure, or directive will result in more severe sanctions/responsive actions.
- 56.4.2 *Required Counseling:* A mandate to meet with and engage in either UNC Pembroke-sponsored or external counseling to better comprehend the misconduct and its effects.
- 56.4.3 *Unilateral No-Contact Order:* a mandate for no direct or indirect contact by the Respondent with or to the Complainant at any time. This includes, but is not limited to, communication that is considered written, electronic, verbal, or physical. Written and electronic communication is understood to include all electronic means of communication; including, but not limited to, email, instant messaging, social networking sites, text messaging, etc. Verbal communication is understood to include phone calls, voicemails, etc. A no-contact order directive may include additional restrictions and terms.
- 56.4.4 *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- 56.4.5 *Suspension:* Termination of student status for a definite period of time until specific criteria are met. Students who return from suspension may be placed on probation through the remainder of their tenure as a student at UNC Pembroke.
- 56.4.6 *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend UNC Pembroke-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript
- 56.4.7 *Withholding Diploma:* UNC Pembroke may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- 56.4.8 *Revocation of Degree:* UNC Pembroke reserves the right to revoke a degree previously awarded from UNC Pembroke for fraud, misrepresentation, and/or other violation of UNC Pembroke policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- 56.4.9 *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including UNC Pembroke registration) for a specified period of time.
- 56.4.10 *Other Actions:* In addition to or in place of the above sanctions, UNC Pembroke may assign any other sanctions as deemed appropriate.
- 56.5 **Employee Sanctions:** Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:
- 56.5.1 *Warning – Verbal or Written*

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<sup>14</sup> Subject to UNC Pembroke's Organizational Code of Conduct.

- 56.5.2 *Performance Improvement Plan/Management Process*
- 56.5.3 *Enhanced supervision, observation, or review*
- 56.5.4 *Required Counseling*
- 56.5.5 *Required Training or Education*
- 56.5.6 *Probation*
- 56.5.7 *Denial of Pay Increase/Pay Grade*
- 56.5.8 *Loss of Oversight or Supervisory Responsibility*
- 56.5.9 *Demotion*
- 56.5.10 *Transfer*
- 56.5.11 *Reassignment*
- 56.5.12 *Delay of tenure track progress*
- 56.5.13 *Assignment to new supervisor*
- 56.5.14 *Restriction of stipends, research, and/or professional development resources*
- 56.5.15 *Suspension with pay*
- 56.5.16 *Suspension without pay*
- 56.5.17 *Termination*
- 56.5.18 *Other Actions*: In addition to or in place of the above sanctions/responsive actions, UNC Pembroke may assign any other responsive actions as deemed appropriate.

## **57. Withdrawal or Resignation While Charges Pending**

- 57.1 Students: If a student has an allegation pending for violation of the Sexual Harassment Policy, the Title IX Coordinator will place a hold on the student's ability to register for class(es), graduate, and/or to receive an official transcript/diploma.
- 57.2 Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from UNC Pembroke, the resolution process ends, as UNC Pembroke no longer has disciplinary jurisdiction over the withdrawn student. However, the registration and transcript hold remains on the student's account.
- 57.3 UNC Pembroke will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to UNC Pembroke. The registration and transcript hold will remain in place on their ability to be readmitted. They may also be barred from UNC Pembroke property and/or events.
- 57.4 If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to UNC Pembroke unless and until all sanctions have been satisfied.
- 57.5 Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as UNC Pembroke no longer has disciplinary jurisdiction over the resigned employee.
- 57.6 However, UNC Pembroke will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.
- 57.7 The employee who resigns with unresolved allegations pending is not eligible for rehire with UNC Pembroke and the records retained by the Title IX Coordinator and the Office of Human Resources will reflect that status.
- 57.8 All UNC Pembroke responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.



## **58. Appeals**

- 58.1 Any party may file a request for appeal, but it must be submitted in writing to the Hearing Facilitator within three (3) business days of the delivery of the Notice of Outcome.
- 58.2 To appeal a determination on responsibility and/or sanction, all parties must file a Request for Appeal form. [Link](#)
- 58.3 Students and Staff may appeal the determination of responsibility and/or the sanction(s).
- 58.4 Faculty may appeal the sanction(s).

## **59. Grounds for Appeal**

- 59.1 Appeals are limited to the following grounds:
  - 59.1.1 Procedural irregularity that affected the outcome of the matter;
  - 59.1.2 New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
  - 59.1.3 The Title IX Coordinator, Investigator(s), Hearing Facilitator, or Hearing Board members had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter;
  - 59.1.4 A violation of due process; or
  - 59.1.5 A material deviation from the Section 700.4.1 of the UNC Policy Manual (Students).

## **60. Appeal Procedure**

- 60.1 If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied and the parties and their Advisors will be notified in writing of the denial and the rationale.
- 60.2 If any of the grounds in the Request for Appeal meet the grounds in this Regulation, the Hearing Facilitator will notify the other party(ies) and their respective Advisors and attorney/non-attorney advocates, Hearing Board Chair, Investigator, and the Title IX Coordinator.
- 60.3 The other party(ies) and their respective Advisors and attorney/non-attorney advocates, and the Title IX Coordinator will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses to the appeal will be forwarded by the Hearing Facilitator to all parties for review and comment.
- 60.4 The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Regulation by the Appeal Board Chair and either denied or approved. If approved, it will be forwarded to the party (and their Advisor and attorney/non-attorney advocate) who initially requested an appeal, Hearing Board Chair, Investigator and the Title IX Coordinator who will submit their responses, if any, in three (3) business days, which will be circulated for review and comment by all parties.
- 60.5 Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Board. The Appeal Board will render a decision in no more than 7 business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence (student) or the clear and convincing evidence (faculty) standard.
- 60.6 A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the following:
  - 60.6.1 the finding on each ground for appeal,
  - 60.6.2 any specific instructions for remand or reconsideration,

- 60.6.3 any sanctions that may result which the UNC Pembroke is permitted to share according to state or federal law, and
- 60.6.4 the rationale supporting the essential findings to the extent the UNC Pembroke is permitted to share under state or federal law.
- 60.7 Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' UNC Pembroke-issued email or otherwise approved account.
- 60.8 Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## **61. Appeal Considerations**

- 61.1 Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- 61.2 Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- 61.3 An appeal is not an opportunity for Appeal Board members to substitute their judgment for that of the original Hearing Board merely because they disagree with the finding and/or sanction(s).
- 61.4 The Appeal Board Chair/Hearing Board Members may consult with the Title IX Coordinator, Hearing Facilitator, and/or Hearing Board Chair on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- 61.5 Appeals granted based on new evidence should normally be remanded to the original Investigator and/or Hearing Board for reconsideration. Other appeals may be remanded at the discretion of the Hearing Facilitator or, in limited circumstances, decided on appeal.
- 61.6 When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- 61.7 In rare cases where a procedural or substantive error cannot be cured by the original Hearing Board (as in cases of bias), the appeal may order a new hearing with new Hearing Board members.
- 61.8 The results of a remand to a Hearing Board cannot be appealed. The results of a new hearing can be appealed, once, on any of the five available appeal grounds.
- 61.9 In cases in which the appeal results in reinstatement to UNC Pembroke or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

**62. Student Appeals:** A student party may appeal to the Campus Appeal Board, which members cannot have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

- 62.1 The Campus Appeal Board has the authority to approve, reject, or modify sanctions. It may impose less severe sanctions as well as more severe sanctions. The decision of the Campus Appeal Board may be appealed to the Chancellor or designee by completing the Request for Appellate Consideration form. The appeal must be submitted to the Hearing Facilitator within three (3) business days for submission of the appeal to the Chancellor or designee for prompt consideration.
- 62.2 Campus Appeal Board Composition:
- 62.2.1 Chair: Faculty Senate Chair
- 62.2.2 President of the Student Body or designee from SGA Executive Board
- 62.2.3 1 Faculty member recommended by the faculty senate chair
- 62.2.4 1 Staff member recommended by the Vice Chancellor for Student Affairs



- 62.3 The faculty and staff member will be appointed by the Chancellor.
- 62.4 A quorum shall consist of any three (3) members, including the chair
- 62.5 All requests for appeal consideration by the parties must be submitted in writing to the Hearing Facilitator within three (3) business days of the delivery of the Hearing Board's Notice of Outcome letter. Any party may appeal the findings only under the grounds described above.
- 62.6 When any party requests an appeal, the Hearing Facilitator will share the appeal request with the other party(ies) or other appropriate persons such as the Title IX Coordinator, who may file a response within three (3) business days. The other party may also bring their own appeal on separate grounds.
- 62.7 The Request(s) for Appeal will be forwarded to the Campus Appeal Board Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).
- 62.8 This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.
- 62.9 Upon receiving an appeal request, the Campus Appeal Board shall obtain the record of the Hearing Board. Such record shall include relevant documents and a written statement by the hearing officer. Such statement in the case of administrative action shall summarize the case and the reasons supporting the disciplinary action.
- 62.10 If the Conduct Appeal Board determines that a hearing should be granted, that hearing shall be held within seven (7) calendar days of such determination and notification shall be given in writing at least three (3) days prior to the date set for the hearing, specifying time and place of the hearing and informing the student of their rights. If a student chooses to waive the seven-day (7) notice and other requirements as stated in this section, an immediate appeal hearing may be scheduled.
- 62.11 The Campus Appeal Board shall invite the appellant, the Hearing Facilitator, Hearing Board Chair, and/or such other person as it deems appropriate to appear before the board to make statements and respond to questions. The student and administrative hearing officer may request the board to invite persons to testify if, and only if, there is new evidence. The Campus Appeal Board follows regular hearing procedures in appeal cases, if it elects to hear new evidence.
- 62.12 After the hearing is concluded, the Conduct Appeal Board shall go into deliberation to reach a decision.
- 62.13 The Campus Appeal Board has the authority to approve, reject, or modify the decision in question. It may impose less severe sanctions as well as more severe sanctions. The chairperson of the Conduct Appeal Board is a nonvoting member, except when there is a tie vote. The decision of the Campus Appeal Board will be submitted in writing to the Hearing Facilitator. The decision of the Campus Appeal Board may be appealed to the Chancellor or their designee. Prompt notice of the decision of the Conduct Appeal Board shall be given. Any appeal of this decision must be in writing and presented to the Hearing Facilitator within three (3) days after notification of the decision. The Hearing Facilitator will submit the appeal to the Chancellor or their designee.
- 62.14 Just as with original determinations, appeal decisions by the Campus Appeal Board must also result in a written decision describing the result of the appeal and the rationale supporting it, authored by the Campus Appeal Board chair and members. The parties must receive the written decision simultaneously from the Hearing Facilitator.
- 62.15 To assure due process, the implementation of sanctions should wait until the final determination of an appeal is truly final and not susceptible to further changes. However, if an ongoing risk or threat is apparent, the implementation of a supportive measure(s) can be used post-hearing but before a final appeal decision. If an emergency removal is implemented early in the Title IX process, reasonable steps should be taken to ensure a Respondent's academic progress is not inhibited
- 62.16 Appeal of Student Conduct Appeal Board Decision**
- 62.16.1 In the event a Respondent and/or Complainant disagrees with a finding of responsible or sanction of the Campus Appeal Board, either or both parties may request an appeal in writing to the Chancellor or their designee within three (3) business days after notification of the decision. Original sanctions (except

Emergency Removal) are normally put into effect only after the Chancellor or their designee makes a decision.

62.16.2 The appellate process is available to both the Respondent and Complainant parties, on the following basis:

62.16.2.a. Procedural irregularity that affected the outcome of the matter;

62.16.2.b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

62.16.2.c. The Title IX Coordinator, Investigator(s), Hearing Facilitator, or Hearing Board members had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter;

62.16.2.d. A violation of due process; or

62.16.2.e. A material deviation from the Section 700.4.1 of the UNC Policy Manual (Students).

62.17 The procedure for an appeal of a Campus Appeal Board decision is as follows:

62.17.1 The function of the Chancellor or their designee in hearing an appeal is that of reviewing the action of the Campus Appeal Board to determine if:

62.17.1.a. an alleged violation of the rights guaranteed the Respondent has occurred and/or;

62.17.1.b. the sanctions and/or conditions of sanctions are extraordinarily disproportionate to the violation(s); and/or

62.17.1.c. discovery of new and significant information that would have affected the outcome of the hearing and that was not known, or could not reasonably have been discovered and/or presented at the time of the hearing.

62.17.2 The Chancellor or their designee shall receive the petition from a student choosing to appeal the decision of the Campus Appeal Board. Such petition shall be submitted in writing to the Chancellor or their designee through the director of Student Conduct explaining in detail the reasons for the student's appeal and specifying the ways in which the student believes the procedures or actions of the judicial process have violated their rights;

62.17.3 Upon receiving a petition, the Chancellor or their designee shall obtain the record of the Campus Appeal Board. Such record shall include relevant documents and a written statement by the Campus Appeal Board. Such statement shall summarize the case and the reasons supporting the Conduct Appeal Board's decision;

62.17.4 With this information, the Chancellor or their designee shall decide whether an appeal hearing is warranted. This decision is based upon the five (5) options for an appeal stated in 61.16.2 The Chancellor shall notify the petitioner in writing of their decision within seven (7) calendar days after receiving the student's petition;

62.17.5 If the Chancellor or their designee determines that a hearing shall be granted, that hearing shall be held within seven (7) calendar days of such determination and notification shall be given in writing at least three (3) calendar days prior to the date set for the hearing, specifying time, date, and place of the hearing and informing the student of their rights;

62.17.6 The Chancellor or their designee may invite the appellant and other persons as they deem appropriate to appear before them to make statements and respond to questions. The student may request the Chancellor or their designee to invite persons to testify if there is new evidence; and

62.17.7 The Chancellor or their designee has the authority to approve, reject, or modify the decision in question. The Chancellor or their designee may impose less severe sanctions as well as more severe sanctions.

62.18 In cases where the appeal is based upon the foundation that "the sanctions and/or conditions of sanctions are extraordinarily disproportionate to the violation(s)," the Chancellor or their designee may determine to review only the sanctions as provided and issue a determination. The Chancellor or their designee has the authority to approve, reject, or modify sanctions.

62.19 The Chancellor or their designee issues the Final Determination. There is no other university appeal.

**63. Staff Appeals:** An employee may appeal a determination of responsible or not responsible and any sanction to the Office of Administrative Hearings.

63.1 University Requirements to Notify Grievant of Appeal Rights

63.1.1 The Final University Decision shall inform the Grievant in writing of any appeal rights through the Office of Administrative Hearings for contested cases issues.

63.1.2 The Grievant must be specifically informed of the following:

63.1.2.a. The appeal is made by filing a “Petition for a Contested Case” hearing with the Office of Administrative Hearings;

63.1.2.b. The appeal to the Office of Administrative Hearings must be filed within 30 calendar days after the Grievant receives the Final University Decision; and

63.1.2.c. A fee is charged for filing a Petition for a Contested Case Hearing.

63.2 Grievant Access to the Office of Administrative Hearings

63.2.1 If the Grievant is not satisfied with the Final University Decision, the Grievant may file a Petition for Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be appealed. An Administrative Law Judge will conduct a hearing and render a Final Decision.

63.2.2 A Petition for Contested Case Hearing must be filed within 30 calendar days after the Grievant receives the Final University Decision. The Grievant may file the appeal at:

Office of Administrative Hearings

1711 New Hope Church Road, Raleigh, NC 27609 (Physical Address)

6714 Mail Service Center, Raleigh, NC 27699-6700 (Mailing Address)

(919) 431-3000

63.2.3 Hearing procedure requirements and filing form (OAH Form H-06A) can be obtained from the Office of Administrative Hearings at: <http://www.ncoah.com/hearings/> or by calling (919) 431-3000.

**64. Faculty Appeals:**

64.1 If the Sexual Harassment Hearing Board results in a determination of responsibility against a faculty Respondent, who is the beneficiary of institutional guarantees of tenure, the Hearing Board’s sanction shall be referred to the Vice Chancellor for Academic Affairs for consideration of appropriate disciplinary sanction, if any.

64.2 Both parties may request an appeal in writing to the chair of the Faculty Hearing Committee within five (5) days after notification of the sanction decision.

64.3 The Faculty Hearing Committee, as an appeal board, considers requests for appeals regarding sanctions, such as, discharge or the imposition of serious sanctions, non-reappointment, or termination of employment. See Faculty Handbook.

64.4 In proceedings under §603 of *The Code* involving imposition of serious sanctions based upon the Sexual Harassment Resolution Process, the Hearing Board’s written determination may be included as evidence of the grounds for the sanction; however, the finding(s) of responsibility by the Sexual Harassment Hearing Board is not subject for review.

64.5 In determining the appropriateness of the sanction, the Faculty Hearing Committee will use the following standard of evidence: clear and convincing.

64.6 §611 of *The Code*: The conclusions of the Sexual Harassment Complaint Resolution Process regarding responsibility for violation of policy are not grievable under §611 of *The Code*.

**65. Sanctions Status During the Appeal**

65.1 Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

65.2 If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

65.3 The Office of Title IX and Clery Compliance may still place or maintain holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

## **66. Long-Term Remedies/Other Actions**

66.1 Following the conclusion of the Sexual Harassment Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

66.2 These remedies/actions may include, but are not limited to:

66.2.1 Referral to counseling and health services

66.2.2 Referral to the Employee Assistance Program

66.2.3 Education to the individual and/or the community

66.2.4 Permanent alteration of housing assignments

66.2.5 Permanent alteration of work arrangements for employees

66.2.6 Provision of campus safety escorts

66.2.7 Climate surveys

66.2.8 Policy modification and/or training

66.2.9 Provision of transportation accommodations

66.2.10 Implementation of long-term contact limitations between the parties

66.2.11 Implementation of adjustments to academic deadlines, course schedules, etc.

66.3 At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

66.4 When no policy violation is found, the Title IX Coordinator will address any remedies owed by UNC Pembroke to the Respondent to ensure no effective denial of educational access.

66.5 UNC Pembroke will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the UNC Pembroke's ability to provide these services.

## **67. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

67.1 All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Hearing Boards and/or the Office of Human Resources.

67.2 Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from UNC Pembroke and may be noted on a student's official transcript.

67.3 A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## **68. Recordkeeping**

68.1 UNC Pembroke will maintain for a period of seven years records of:

68.1.1 Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;

68.1.2 Any disciplinary sanctions imposed on the Respondent;

68.1.3 Any remedies provided to the Complainant designed to restore or preserve equal access to UNC

Pembroke's education program or activity;

68.1.4 Any appeal and the result therefrom;

68.1.5 Any Informal Resolution and the result therefrom;

68.1.6 All materials used to train Title IX Coordinators, Investigators, Hearing Board members, Hearing Facilitators, and any person who facilitates an Informal Resolution process. UNC Pembroke will make these training materials publicly available on the Office of Title IX and Clery Compliance website; and

68.1.7 Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:

68.1.7.a. The basis for all conclusions that the response was not deliberately indifferent;

68.1.7.b. Any measures designed to restore or preserve equal access to UNC Pembroke's education program or activity; and

68.1.7.c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

68.2 UNC Pembroke will also maintain any and all records in accordance with state and federal laws.

## **69. Disabilities Accommodations in the Sexual Harassment Resolution Process**

69.1 UNC Pembroke is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to UNC Pembroke's resolution process.

69.2 Anyone needing such accommodations or support should contact the Director of Accessibility Resource Center, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator and/or Hearing Facilitator, determine which accommodations are appropriate and necessary for full participation in the process.

**70. INCLUSIVE COMPLAINT PROCESS (ICP; Non-Title IX sexual harassment cases)**

**71. When applicable:**

71.1 ICP is applicable when the Title IX Coordinator determines FGP is inapplicable, or offenses subject to FGP have been dismissed.

71.2 If FGP is applicable, then FGP must be applied in lieu of ICP.

71.3 VAWA §304 requirements apply to ICP and any alternative process for reports that fall under VAWA.

71.4 UNC Pembroke will act on any formal or informal allegation or notice of violation of this policy that is received by the Title IX Coordinator<sup>15</sup> or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated above.

71.5 The procedures described below apply to all allegations of sex-based harassment or discrimination on the basis of protected class status involving students, faculty, staff, or third parties

71.6 These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

**72. Initial Assessment**

72.1 Following intake, receipt of notice, or a complaint of an alleged violation of this policy, the Title IX Coordinator<sup>16</sup> engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

72.1.1 The Title IX Coordinator reaches out to the Complainant to offer supportive measures.

72.1.2 The Title IX Coordinator informs Student Complainant of their right to have an attorney/non-attorney advocate with them at all meetings and interviews at which the party is entitled to be present, including intake and interviews.

72.1.3 The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive response or an Grievance Process resolution.

71.1.3.a. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implement accordingly. The Grievance Process resolution is not initiated, though the Complainant can elect to initiate it later, if desired.

71.1.3.b. If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.

71.1.3.c. If a Grievance Process is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:

71.1.3.c.1. Incident, and/or

71.1.3.c.2. A potential pattern of misconduct, and/or

71.1.3.c.3. A culture/climate issue.

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<sup>15</sup> All references herein to a Title IX Coordinator also include a designee of the Title IX Coordinator.

<sup>16</sup> If circumstances require, the Chancellor or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.



### **73. Violence Risk Assessment**

73.1 In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Emergency Health and Safety Committee (EHS) as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

73.1.1 Interim suspension of a Respondent who is a **threat to health/safety**;

73.1.2 Whether the Title IX Coordinator should pursue Administrative Resolution absent a willing/able Complainant;

73.1.3 Whether to put the investigation on the footing of incident and/or pattern and/or climate;

73.1.4 To help identify potentially predatory conduct;

73.1.5 To help assess/identify grooming behaviors;

73.1.6 Whether a Complaint is amenable to Informal Resolution, and what modality may be most successful;

73.1.7 Whether to permit a voluntary withdrawal by the Respondent;

73.1.8 Whether to communicate with a transfer UNC Pembroke about a Respondent;

73.1.9 Assessment of appropriate sanctions/remedies;

73.1.10 Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed.

73.2 In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Emergency Health and Safety Committee (EHS) as part of the initial assessment.

73.3 A VRA can aid in ten critical and/or required determinations, including:

73.3.1 Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;

73.3.2 Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;

73.3.3 Whether to put the investigation on the footing of incident and/or pattern and/or climate;

73.3.4 To help identify potential predatory conduct;

73.3.5 To help assess/identify grooming behaviors;

73.3.6 Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;

73.3.7 Whether to permit a voluntary withdrawal by the Respondent;

73.3.8 Whether to impose transcript notation or communicate with a transfer university about a Respondent;

73.3.9 Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or

73.3.10 Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata (ban) is needed.

73.4 Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

73.5 VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or threat assessment team.

73.6 A VRA authorized by the Title IX Coordinator should occur in collaboration with UNC Pembroke's Emergency Health and Safety Committee. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

73.7 A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

73.8 More about the UNC Pembroke's process for VRA can be found in the Sexual Harassment Policy, Appendix C.

#### **74. Counterclaims**

74.1 Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. UNC Pembroke is obligated to ensure that any process is not abused for retaliatory purposes.

74.2 UNC Pembroke permits the filing of counterclaims, but uses the initial assessment, described above in the Policy section, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation.

74.3 A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

#### **75. Resolution Process**

75.1 Based on the initial assessment, UNC Pembroke will initiate one of two responses:

75.1.1 **Informal Resolution** – typically used for less serious offenses and only when all parties agree to Alternate Resolution, or when the Respondent is willing to accept responsibility for violating policy. This can also include a remedies-only response.

75.1.2 **Grievance Process** – investigation of policy violation(s) and recommended finding, subject to a determination by the Hearing Board members and the opportunity to appeal to an Appeal Board.

75.2 The investigation and the subsequent hearing will determine whether the Sexual Harassment policy has been violated. If so, UNC Pembroke will promptly implement effective remedies designed to end the discrimination and/or harassment, prevent recurrence, and address the effects.

75.3 The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator. At any point during the initial assessment or formal investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

75.4 The Complainant may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances.

#### **76. Resolution Options**

76.1 Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with UNC Pembroke Policy.

76.2 Although there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose, with the exception of information the parties agree not to discuss related Informal Resolution, discussed below. UNC Pembroke encourages parties to discuss any sharing of information with their Advisors first before doing so.

#### **77. Informal Resolution**

77.1 Informal Resolution is applicable in the following situations:

77.1.1 When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.

77.1.2 When the parties voluntarily agree to resolve the matter through an alternate resolution mechanism as described below, (mediation, restorative practices, etc.) usually before a formal investigation takes place; see discussion below.



77.1.3 When the Respondent accepts responsibility for violating Policy and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation) ; see discussion below.

77.2 It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the fact, Administrative Resolution may be pursued.

## **78. Informal Resolution: Alternate Resolution Mechanism**

78.1 Alternate Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation.. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Grievance Process resolution (described below) to resolve conflicts. The parties must consent to the use of Alternate Resolution.

78.2 The Title IX Coordinator determines if Alternate Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution.

78.3 In an Alternate Resolution meeting, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Institutionally-imposed sanctions are not possible as the result of an Alternate Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies.

78.4 The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

78.5 Alternate Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Administrative Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. The results of Alternate Resolution are not appealable.

## **79. Informal Resolution: Respondent Accepts Responsibility for Alleged Violations**

79.1 The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of UNC Pembroke Policy.

79.2 The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

79.3 If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

79.4 If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties are still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.

## **80. Informal Resolution: Negotiated Resolution**

80.1 The Title IX Coordinator, with the consent of the parties, may negotiate and implement any agreement to resolve the allegations that satisfies all parties and UNC Pembroke.

## **81. Grievance Process Pool**

- 81.1 The Grievance processes rely on a pool of officials (“Pool”) to carry out the process.
- 81.2 The list of members and a description of the Pool can be found at [\[link\]](#).
- 81.3 Members of the Pool are trained annually in all aspects of the resolution process and can serve in any of the following roles, at the direction of the Title IX Coordinator:
  - 81.3.1 To facilitate Informal Resolution
  - 81.3.2 To serve as a Hearing Board member
  - 81.3.3 To serve on an Appeal Board
- 81.4 The Chancellor, in consultation with the Title IX Coordinator, appoints the Pool, which acts with independence and impartiality.
- 81.5 Pool members receive annual training organized by the Title IX Coordinator, including a review of UNC Pembroke policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.
- 81.6 The Pool members receive annual training jointly or specific to their role. This training includes, but is not limited to:
  - 81.6.1 The scope of the UNC Pembroke’s Sexual Harassment Policy and Regulation
  - 81.6.2 How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
  - 81.6.3 Implicit bias
  - 81.6.4 Disparate treatment and impact
  - 81.6.5 Reporting, confidentiality, and privacy requirements
  - 81.6.6 Applicable laws, regulations, and federal regulatory guidance
  - 81.6.7 How to implement appropriate and situation-specific remedies
  - 81.6.8 How to investigate in a thorough, reliable, and impartial manner
  - 81.6.9 How to uphold fairness, equity, and due process
  - 81.6.10 How to weigh evidence
  - 81.6.11 How to conduct questioning
  - 81.6.12 How to assess credibility
  - 81.6.13 Impartiality and objectivity
  - 81.6.14 Types of evidence
  - 81.6.15 Deliberation
  - 81.6.16 How to render findings and generate clear, concise, evidence-based rationales
  - 81.6.17 The definitions of all offenses
  - 81.6.18 How to apply definitions used by the UNC Pembroke with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
  - 81.6.19 How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
  - 81.6.20 How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
  - 81.6.21 Any technology to be used
  - 81.6.22 Issues of relevance of questions and evidence
  - 81.6.23 Issues of relevance to create an investigation report that fairly summarizes relevant evidence
  - 81.6.24 How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
  - 81.6.25 Recordkeeping
- 81.7 All Pool members are required to attend annual training. Specific training is also provided for Hearing Board members and Appeal Board members.
- 81.8 The Grievance Process Pool includes:
  - 81.8.1 2 Hearing Board Chairs, voting members

- 81.8.2 At least 6 members of Academic Affairs
- 81.8.3 At least 6 members of the administration/staff
- 81.8.4 At least 1 member from Human Resources
- 81.8.5 At least 3 representatives from Athletics
- 81.9 Pool members are usually appointed to two-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

## **82. Right to an Attorney/Non-Attorney Advocate**

82.1 Student parties may also have an attorney/non-attorney advocate<sup>17</sup> of their choice present with them for all meetings and interviews during the resolution process, if they so choose. The parties may select whomever they wish to server as their advocate so long as the advocate is eligible and available.<sup>18</sup>

## **83. Advisors**

### **83.1 Expectations of an Advisor**

83.1.1 UNC Pembroke generally expects an Advisor to adjust their schedule to allow them to attend meetings/interviews when planned, but UNC Pembroke may change scheduled meetings to accommodate an Advisor’s inability to attend, if doing so does not cause an unreasonable delay.

83.1.2 UNC Pembroke may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

83.1.3 Parties whose Advisors are disruptive or who do not abide by UNC Pembroke policies and procedures may face the loss of that Advisor and/or possible Policy violations.

83.1.4 Advisors are expected to consult with their advisees without disrupting UNC Pembroke meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

## **84. Expectations of the Parties with Respect to Advisors**

84.1.1 Each party may choose an Advisor<sup>19</sup> who is eligible and available<sup>20</sup> to accompany them throughout the process. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

84.1.2 The parties are limited to two Advisors to accompany them throughout the investigation and adjudication; only one Advisor is to be designated to conduct questioning of the other party and witnesses.

84.1.3 The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

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<sup>17</sup> This could include an attorney, advocate, or support person.

<sup>18</sup> “Available” means the party cannot insist on an attorney/non-attorney advocate who simply doesn’t have inclination, time, or availability. Also, the advocate cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

<sup>19</sup> This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally.

<sup>20</sup> “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

84.1.4 The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator if they change Advisors at any time.

84.1.5 Upon written request of a party, UNC Pembroke will copy the Advisor on all communications between the UNC Pembroke and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

## **85. ICP: Sexual Harassment Resolution Process**

85.1 A Sexual Harassment Resolution Process can be pursued for any behavior that constitutes conduct covered by the Sexual Harassment Policy for which the Respondent has not accepted responsibility at any time during the process. The resolution process starts with a thorough, reliable, and impartial investigation.

85.2 If the resolution process is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the initial investigation. Typically, notice is given [at least 48 hours] in advance of an interview. Advanced notice facilitates the Student parties' ability to identify and choose an attorney/non-attorney advocate, if any, to accompany them to the interview.

85.3 Notification will include a meaningful summary of the allegations, will be made in writing, and will be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official UNC Pembroke records, or emailed to the parties' UNC Pembroke-issued or designated email account.

85.4 Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

85.5 UNC Pembroke aims to complete all investigations within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

85.6 The Title IX Coordinator will vet the assigned Investigator to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

85.7 The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the university's Chief of Staff.

85.8 Investigations are completed expeditiously, normally within 20-30 business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

85.9 UNC Pembroke will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

85.10 UNC Pembroke may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke the UNC Pembroke's resolution process are being investigated by law enforcement. UNC Pembroke will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

85.11 UNC Pembroke action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

85.12 Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

85.13 All parties have a full and fair opportunity, though the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

**86. Delays in the Investigation Process and Interactions with Law Enforcement**

86.1 UNC Pembroke may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

86.2 UNC Pembroke will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. UNC Pembroke will promptly resume its investigation and resolution process as soon as feasible. During such a delay, UNC Pembroke will implement supportive measures as deemed appropriate.

**87. ICP: Investigation Process**

87.1 The Investigator typically take the following steps, if not already completed (not necessarily in this order):

87.1.1 Determine the identity and contact information of the Complainant

87.1.2 In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures

87.1.3 Identify all policies implicated by the alleged misconduct

87.1.4 Assist the Title IX Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy

87.1.5 If there is insufficient evidence to support reasonable cause, the process is closed with no further action

87.1.6 Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses

87.1.7 Meet with the Complainant to finalize their statement, if necessary

87.1.8 Prepare the initial Notice of Investigation and Allegation (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.

87.1.9 Notice should inform the Student parties of their right to have an attorney/non-attorney advocate

87.1.10 When formal notice is being given, it should provide the parties with the following:

83.1.10.a a written description of the alleged violation(s),

83.1.10.b a list of all policies allegedly violated,

83.1.10.c a description of the applicable procedures, and

83.1.10.d a statement of the potential sanctions/responsive actions that could result

87.1.11 Give an instruction to the parties to preserve any evidence that is directly related to the allegations

87.1.12 Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness

87.1.13 Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible

87.1.14 Interview all relevant individuals and conduct follow-up interviews as necessary

87.1.15 Allow each party the opportunity to suggest questions they wish the Investigator to ask of the other party and witnesses

- 87.1.16 Complete the investigation promptly and without unreasonable deviation from the intended timeline
- 87.1.17 Provide regular status updates to the parties throughout the investigation
- 87.1.18 Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding
- 87.1.19 Write a comprehensive investigation report fully summarizing the investigation and all evidence
- 87.1.20 Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- 87.1.21 Provide each party with a full and fair opportunity to respond to the report in writing within 7 business days and incorporate that response into the report
- 87.1.22 Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- 87.1.23 Share the report with the Title IX Coordinator for review and feedback
- 87.1.24 Provide the final report to the Title IX Coordinator. Recommend to the Title IX Coordinator a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not), a synthesis of evidence, an assessment of credibility

## **88. Determination**

- 88.1 Within two to three days of receiving the Investigator's final report and recommendation, the Title IX Coordinator reviews the final report and determines whether to send the final report to the Hearing Facilitator for adjudication.
- 88.2 If a hearing is granted, written notice will be provided to the Complainant and Respondent by the Hearing Facilitator.

## **89. Additional Details of the Investigation Process**

- 89.1 **Witness responsibilities:** Witnesses (as distinguished from the parties) who are faculty or staff of UNC Pembroke are expected to cooperate with and participate in UNC Pembroke's investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.
- 89.2 **Remote processes:** Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator or Hearing Board Chair determine that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator, though this approach is not ideal. Where remote technologies are used, the UNC Pembroke makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.
- 89.3 **Recording:** No unauthorized audio or video recording of any kind is permitted during the resolution process. The Investigator may elect to audio and/or video record interviews.
- 89.4 **Evidence:** Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.
- 89.5 **Sexual history/patterns:** Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding do not consider:
  - 89.5.1 incidents not directly related to the possible violation, unless they evidence a pattern;
  - 89.5.2 the sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); or

89.5.3 the character of the parties.

89.6 **Previous allegations/violations:** While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

89.7 Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s), if the UNC Pembroke uses a progressive discipline system.

## **90. Pre-Hearing Meetings**

90.1 The Hearing Board Chair and Hearing Facilitator will convene a pre-hearing meeting(s) with the parties (and Student's attorney/non-attorney advocate) to discuss hearing process and procedure. They may also submit questions or topics they wish to ask or discuss at the hearing, so that the Hearing Board Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the party from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing.

90.2 The pre-hearing meeting(s) will not be recorded.

## **91. Hearing Procedures**

91.1 At the hearing, the Hearing Board members have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Sexual Harassment policy.

91.2 Participants at the hearing will include the Hearing Board Chair, any additional board members, the Hearing Facilitator, the Investigator who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent<sup>21</sup>), an attorney/non-attorney advocate, (Student), a Support Person, any called witnesses, and anyone providing authorized accommodations or assistive services. The Title IX Coordinator may attend the hearing.

91.3 The Hearing Board Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

91.4 The Hearing Board Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Board members and the parties and will then be excused.

## **92. The Order of the Hearing – Introductions and Explanation of Procedures**

92.1 The Hearing Board Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of a Hearing Board member on the basis of bias or conflict of interest. The Hearing Board Chair will rule on any such challenge unless the Hearing Board Chair is the individual who is the subject of the challenge, in which case the Hearing Facilitator will review and decide the challenge.

92.2 The Hearing Board Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by the hearing facilitator. The hearing facilitator may also attend to: logistics of rooms for various parties/witnesses as they wait; flow of

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<sup>21</sup> Subject to UNC Pembroke's Code of Organizational Conduct.



parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

**93. Investigator Presents the Final Investigation Report**

93.1 The Investigator will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Board members and the parties. The Investigator will be present during the entire hearing process, but not during deliberations.

93.2 Neither the parties nor the Hearing Board members should ask the Investigator's opinions on credibility, recommended findings, or determinations, and the Investigators, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Hearing Board Chair will direct that it be disregarded.

**94. Testimony and Questioning**

94.1 Once the Investigator presents the investigative report and is questioned, the parties and witnesses may provide relevant information in turn and in the order determined by the Hearing Board Chair. The parties/witnesses will submit to questioning by the Hearing Board members and then by the parties.

94.2 All questions are subject to a relevance determination by the Hearing Board Chair. The party, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default method, but other means of submission may be permitted by the Hearing Board Chair upon request or agreed to by the parties and the Hearing Board Chair). The proceeding will pause to allow the Hearing Board Chair to consider it, and the Hearing Board Chair will determine whether the question will be permitted, disallowed, or rephrased.

94.3 The Hearing Board Chair may explore arguments regarding relevance with the parties, if the Hearing Board Chair so chooses. The Hearing Board Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Hearing Board Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

94.4 The Hearing Board Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Board Chair has final say on all questions and determinations of relevance, subject to any appeal. The Hearing Board Chair may consult with legal counsel on any questions of admissibility. The Hearing Board Chair may ask the parties to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Hearing Board Chair has ruled on a question.

94.5 If the parties raise an issue of bias or conflict of interest of an Investigator or Hearing Board member at the hearing, the Hearing Board Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Hearing Board Chair should not permit irrelevant questions that probe for bias.

94.6 If the hearing is conducted via online service (e.g., WebEx, Zoom, etc.), the parties, and anyone who provides testimony must have their computer/tablet camera in operation during the hearing.

**95. Deliberation, Decision-making, and Standard of Proof**

95.1 The Hearing Board members will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question.

95.1.1 A simple majority vote is required to determine the finding.

95.1.2 The standard of proof for all hearing boards (except the Faculty Hearing Board, which uses clear and convincing as its standard of proof) is preponderance of the evidence.

95.1.3 The hearing facilitator may be invited to attend the deliberation by the Hearing Board Chair.

95.2 **Student Hearing Outcomes:** Sexual harassment hearings regarding student on student

misconduct will result in a finding of responsible or not responsible. If responsible, the Hearing Board also makes a determination of sanctions, if any.

**95.3 Faculty Hearing Outcomes:** Sexual harassment hearings regarding faculty misconduct will result in a finding of responsible or not responsible. If responsible, the issue of sanction(s) is submitted to the Vice-Chancellor for Academic Affairs for consideration of an appropriate disciplinary sanction.

**95.4 Staff Hearing Outcomes:** Sexual harassment hearings regarding staff will result in a finding of responsible or not responsible. If responsible, the issue of sanction(s) is submitted to the Office of Human Resources' Director of Employee Relations to work collaboratively with the Respondent's supervisor to determine an appropriate sanction. If the Respondent's supervisor was the Complainant, the Director of Employee Relations will work with the Complainant's supervisor to determine an appropriate sanction.

**95.5** When there is a finding of responsibility on one or more of the allegations, the Hearing Board members and the Office of Human Resources, respectively, may then consider the previously submitted party impact statements in determining appropriate sanction(s).

**95.6** The Hearing Board Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Hearing Board members may, at their discretion, consider the statements, but they are not binding.

**95.7** The Hearing Board members and the Office of Human Resources, respectively, will review the statements and any pertinent conduct history provided by the Hearing Facilitator and/or Title IX Coordinator and will determine the appropriate sanction(s).

**95.8** The Hearing Board Chair and the Office of Human Resources, respectively, will then prepare a written deliberation statement and deliver it to the Hearing Facilitator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.

**95.9** This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Hearing Facilitator within two (2) business days of the end of deliberations, unless the Hearing Facilitator grants an extension. If an extension is granted, the Hearing Facilitator will notify the parties.

## **96. Notice of Outcome**

**96.1** If the Respondent admits to the violation(s), or is found in violation, the Hearing Facilitator or the Hearing Board, respectively, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively to stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

**96.2** The Hearing Board Chair submits a Notice of Outcome letter to the Hearing Facilitator within seven (7) business days of the Hearing Board deliberations.

**96.3** The Hearing Facilitator informs the parties of the determination within two to three business days of receiving the Notice of Outcome letter, ideally simultaneously, but without significant time delay between notifications. Notifications will be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official UNC Pembroke records; or emailed to the parties' UNC Pembroke-issued or designated email account.

**96.4** Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

**96.5** The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which the UNC Pembroke is permitted to share pursuant to state or federal law, and the rationale supporting the essential findings to the extent the UNC Pembroke is permitted to share under state or federal law.

**96.6** The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

**96.7** Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties

may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found beginning in section 93 below.

## **97. Remedies for Students**

97.1 *Official Warning*: A written reprimand for violation of specified regulations, including a warning that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.

97.2 *Restitution*: Appropriate reimbursement for a wrongful act, which resulted in loss, damage, or actual expenses incurred by the University.

97.3 *Educational Assignments*: This sanction requires that the student complete an assigned task with the purpose of educating the student about the implications, effects, or dangers of their behavior. These assignments can include, but are not limited to, work assignments, mandatory mentoring, restorative justice mediations, or other related discretionary assignments as provided by the hearing officer or hearing board.

97.4 *Area Restrictions*: Exclusion of a student for a designated time period from a facility, such as the gym, the University Center, the residence halls, or other areas on campus.

97.5 *Loss of Privileges*: Denial of specified privileges for a designated period of time. This includes, but is not limited to, loss of position in club(s) or student organization(s), suspension from athletic team or performing group, prohibition from participation in co-curricular activities, or loss of privilege to park or drive on campus.

97.6 *Exclusion from On-Campus Residence*: Defined as removing the student's privilege to apply for and/or live in a residential facility for a specified period of time. This sanction should be imposed if the offense(s) for which the student was found responsible merits the student's exclusion from on-campus residency. This decision would be based on evidence that the student's continued presence would interfere with the living/learning atmosphere within the residential community.

97.7 *Residence Facility Relocation*: Removal of a student from his/her present room or from that residence facility and assigning that student to another room or another residence facility. This would include considerations relative to housing options.

97.8 *Eviction from an On-Campus Residential Facility*: Removal of a resident from an on-campus residence for a specified period of time. Students who are evicted from an on-campus residential facility are prohibited from returning to or visiting in any on-campus residential facility. Students evicted will not be eligible for refund of unused room or board.

## **98. Sanctions**

98.1 Factors considered when determining a sanction/responsive action may include, but are not limited to:

98.1.1 The nature, severity of, and circumstances surrounding the violation(s)

98.1.2 The Respondent's disciplinary history

98.1.3 Previous allegations or allegations involving similar conduct

98.1.4 The need for sanctions/responsive actions to bring an end to the harassment and/or retaliation

98.1.5 The need for sanctions/responsive actions to prevent the future recurrence of harassment and/or retaliation

98.1.6 The need to remedy the effects of the harassment and/or retaliation on the Complainant and the community

98.1.7 The impact on the parties

98.1.8 Any other information deemed relevant by the Hearing Board members

98.2 The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

98.3 The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

98.4 **Student Sanctions:** The following are the usual sanctions that may be imposed upon students or organizations singly or in combination<sup>22</sup>:

98.4.1 *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any UNC Pembroke policy, procedure, or directive will result in more severe sanctions/responsive actions.

98.4.2 *Required Counseling:* A mandate to meet with and engage in either UNC Pembroke-sponsored or external counseling to better comprehend the misconduct and its effects.

98.4.3 *Unilateral No-Contact Order:* a mandate for no direct or indirect contact by the Respondent with or to the Complainant at any time. This includes, but is not limited to, communication that is considered written, electronic, verbal, or physical. Written and electronic communication is understood to include all electronic means of communication; including, but not limited to, email, instant messaging, social networking sites, text messaging, etc. Verbal communication is understood to include phone calls, voicemails, etc. A no-contact order directive may include additional restrictions and terms.

98.4.4 *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

98.4.5 *Suspension:* Termination of student status for a definite period of time until specific criteria are met. Students who return from suspension maybe placed on probation through the remainder of their tenure as a student at UNC Pembroke.

98.4.6 *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend UNC Pembroke-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript

98.4.7 *Withholding Diploma:* UNC Pembroke may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.

98.4.8 *Revocation of Degree:* UNC Pembroke reserves the right to revoke a degree previously awarded from UNC Pembroke for fraud, misrepresentation, and/or other violation of UNC Pembroke policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

98.4.9 *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including UNC Pembroke registration) for a specified period of time.

98.4.10 *Other Actions:* In addition to or in place of the above sanctions, UNC Pembroke may assign any other sanctions as deemed appropriate.

98.5 **Employee Sanctions:** Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

98.5.1 *Warning – Verbal or Written*

98.5.2 *Performance Improvement/Management Process*

98.5.3 *Required Counseling*

98.5.4 *Required Training or Education*

98.5.5 *Probation*

98.5.6 *Loss of Oversight or Supervisory Responsibility*

98.5.7 *Demotion*

98.5.8 *Suspension with pay*

98.5.9 *Suspension without pay*

98.5.10 *Termination*

98.5.11 *Other Actions:* In addition to or in place of the above sanctions, UNC Pembroke may assign any other sanctions as deemed appropriate.

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<sup>22</sup> Subject to UNC Pembroke's Organizational Code of Conduct.

**99. Withdrawal or Resignation While Charges are Pending**

99.1 Students: UNC Pembroke does not permit a student to withdraw if that student has an allegation pending for violation of the Sexual Harassment Policy. The Office of Title IX and Clery Compliance may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

99.2 Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator and the Office of Human Resources will reflect that status, and any UNC Pembroke responses to future inquiries regarding employment references for that individual will include the former employee's unresolved status.

**100. Appeals**

100.1 Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Hearing Facilitator within three (3) business days of the delivery of the Notice of Outcome.

**101. Grounds for Appeal**

101.1 Appeals are limited to the following grounds:

101.1.1 Procedural irregularity that affected the outcome of the matter;

101.1.2 New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

101.1.3 The Title IX Coordinator, Investigator(s), Hearing Facilitator, or Hearing Board members had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter;

101.1.4 A violation of due process; or

101.1.5 A material deviation from the Section 700.4.1 of the UNC Policy Manual (Students).

**102. Appeal Procedure**

102.1 If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied and the parties and their Advisors will be notified in writing of the denial and the rationale.

102.2 If any of the grounds in the Request for Appeal meet the grounds in this Policy, the Hearing Facilitator will notify the other party(ies), Investigator, and the Title IX Coordinator.

102.3 The other party(ies) and their respective Advisors and attorney/non-attorney advocates, and the Title IX Coordinator will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses to the appeal will be forwarded by the Hearing Facilitator to all parties for review and comment.

102.4 The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator, and the Title IX Coordinator, who will submit their responses, if any, in three (3) business days, which will be circulated for review and comment by all parties.

102.5 Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved



grounds and the subsequent responses will be shared with the Appeal Board. The Appeal Board will render a decision in no more than 7 business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence (student) or the clear and convincing evidence (faculty sanctions) standard.

102.6 A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the following:

102.6.1 the finding on each ground for appeal,

102.6.2 any specific instructions for remand or reconsideration,

102.6.3 any sanctions that may result which the UNC Pembroke is permitted to share according to state or federal law, and

102.6.4 the rationale supporting the essential findings to the extent the UNC Pembroke is permitted to share under state or federal law.

102.7 Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' UNC Pembroke-issued email or otherwise approved account.

102.8 Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

### **103. Appeal Considerations**

103.1 Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

103.2 Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

103.3 An appeal is not an opportunity for Appeal Board members to substitute their judgment for that of the original Hearing Board merely because they disagree with the finding and/or sanction(s).

103.4 The Appeal Board Chair may consult with the Title IX Coordinator, Hearing Facilitator, and/or Hearing Board Chair on questions of procedure or rationale, for clarification, if needed.

Documentation of all such consultation will be maintained.

103.5 Appeals granted based on new evidence should normally be remanded to the original Investigator and/or Hearing Board for reconsideration. Other appeals may be remanded at the discretion of the Hearing Facilitator or, in limited circumstances, decided on appeal.

103.6 When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

103.7 In rare cases where a procedural or substantive error cannot be cured by the original Hearing Board (as in cases of bias), the appeal may order a new hearing with new Hearing Board members.

103.8 The results of a remand to a Hearing Board cannot be appealed. The results of a new hearing can be appealed, once, on any of the five available appeal grounds.

103.9 In cases in which the appeal results in reinstatement to UNC Pembroke or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

**104. Student Appeals:** A student party may appeal to the Campus Appeal Board, which members cannot have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

104.1 The Campus Appeal Board has the authority to approve, reject, or modify sanctions. It may impose less severe sanctions as well as more severe sanctions. The decision of the Campus Appeal Board may be appealed to the Chancellor or designee by completing the Request for Appellate Consideration form. The appeal must be submitted to the Hearing Facilitator within three (3) business days for submission of the appeal to the Chancellor or t designee for prompt consideration.

104.2 Campus Appeal Board Composition:

104.2.1 Chair: Faculty Senate Chair

104.2.2 President of the Student Body or designee from SGA Executive Board

104.2.3 1 Faculty member recommended by the faculty senate chair

104.2.4 1 Staff member recommended by the Vice Chancellor for Student Affairs

104.3 The faculty and staff member will be appointed by the Chancellor.

104.4 A quorum shall consist of any three (3) members, including the chair

104.5 All requests for appeal consideration by the parties must be submitted in writing to the Hearing Facilitator within three (3) business days of the delivery of the Notice of Outcome of the Hearing Board. Any party may appeal the findings only under the grounds described above.

104.6 When any party requests an appeal, the Hearing Facilitator will share the appeal request with the other party(ies) or other appropriate persons such as the Title IX Coordinator, who may file a response within three (3) business days. The other party may also bring their own appeal on separate grounds.

104.7 The Request(s) for Appeal will be forwarded to the Campus Appeal Board Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

104.8 This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

104.9 Upon receiving an appeal request, the Campus Appeal Board shall obtain the record of the Hearing Board. Such record shall include relevant documents and a written statement by the Hearing Board Chair. Such statement in the case of administrative action shall summarize the case and the reasons supporting the disciplinary action.

104.10 If the Conduct Appeal Board determines that a hearing should be granted, that hearing shall be held within seven (7) calendar days of such determination and notification shall be given in writing at least three (3) days prior to the date set for the hearing, specifying time and place of the hearing and informing the student of their rights. If a student chooses to waive the seven-day (7) notice and other requirements as stated in this section, an immediate appeal hearing may be scheduled.

104.11 The Campus Appeal Board shall invite the appellant, Hearing Facilitator, Hearing Board Chair, and/or such other person as it deems appropriate to appear before the board to make statements and respond to questions. The student and Hearing Facilitator may request the board to invite persons to testify if, and only if, there is new evidence. The Campus Appeal Board follows regular hearing procedures in appeal cases, if it elects to hear new evidence.

104.12 After the hearing is concluded, the Conduct Appeal Board shall go into deliberation to reach a decision.

104.13 The Campus Appeal Board has the authority to approve, reject, or modify the decision in question. It may impose less severe sanctions as well as more severe sanctions. The chairperson of the Conduct Appeal Board is a nonvoting member, except when there is a tie vote. The decision of the Campus Appeal Board will be submitted in writing to the Hearing Facilitator. The decision of the Campus Appeal Board may be appealed to the Chancellor or their designee. Prompt notice of the decision of the Conduct Appeal Board shall be given. Any appeal of this decision must be in writing and presented within three (3) days after notification of the decision to the director of Student Conduct who will submit the appeal to the Chancellor or their designee.

104.14 Just as with original determinations, appeal decisions by the Campus Appeal Board must also result in a written decision describing the result of the appeal and the rationale supporting it, authored by the Campus Appeal Board chair and members. The parties must receive the written decision simultaneously from the Hearing Facilitator.



104.15 To assure due process, the implementation of sanctions should wait until the final determination of an appeal is truly final and not susceptible to further changes. However, if an ongoing risk or threat is apparent, the implementation of supportive measure(s) can be used post-hearing but before a final appeal decision. If an emergency removal is implemented early in the Title IX process, reasonable steps should be taken to ensure a Respondent's academic progress is not inhibited

#### **104.16 Appeal of a Conduct Appeal Board Decision**

104.16.1 In the event a Respondent and/or Complainant disagrees with a finding of responsible or sanction of the Campus Appeal Board, either or both parties may request an appeal in writing to the Chancellor or their designee within three (3) business days after notification of the decision. Original sanctions (except Emergency Removal) are normally put into effect only after the Chancellor or their designee makes a decision.

104.16.2 The appellate process is available to both the Respondent and Complainant parties, on the following basis:

104.16.2.a. Procedural irregularity that affected the outcome of the matter;

104.16.2.b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

104.16.2.c. The Title IX Coordinator, Investigator(s), Hearing Facilitator, or Hearing Board members had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter;

104.16.2.d. A violation of due process; or

104.16.2.e. A material deviation from the Section 700.4.1 of the UNC Policy Manual (Students).

104.17. The procedure for an appeal of a Campus Appeal Board decision is as follows:

104.17.1. The function of the Chancellor or their designee in hearing an appeal is that of reviewing the action of the Campus Appeal Board to determine if:

104.17.1.a. an alleged violation of the rights guaranteed the Respondent has occurred and/or;

104.17.1.b. the sanctions and/or conditions of sanctions are extraordinarily disproportionate to the violation(s); and/or

104.17.1.c. discovery of new and significant information that would have affected the outcome of the hearing and that was not known, or could not reasonably have been discovered and/or presented at the time of the hearing.

104.17.2. The Chancellor or their designee shall receive the petition from a student choosing to appeal the decision of the Campus Appeal Board. Such petition shall be submitted in writing to the Chancellor or their designee through the director of Student Conduct explaining in detail the reasons for the student's appeal and specifying the ways in which the student believes the procedures or actions of the judicial process have violated their rights;

104.17.3. Upon receiving a petition, the Chancellor or their designee shall obtain the record of the Campus Appeal Board. Such record shall include relevant documents and a written statement by the Campus Appeal Board. Such statement shall summarize the case and the reasons supporting the Conduct Appeal Board's decision;

104.17.4. With this information, the Chancellor or their designee shall decide whether an appeal hearing is warranted. This decision is based upon the five (5) options for an appeal stated in 100.0. The Chancellor shall notify the petitioner in writing of their decision within seven (7) calendar days after receiving the student's petition;

104.17.5. If the Chancellor or their designee determines that a hearing shall be granted, that hearing shall be held within seven (7) calendar days of such determination and notification shall be given in writing at least three (3) calendar days prior to the date set for the hearing, specifying time, date, and place of the hearing and informing the student of their rights;

104.17.6. The Chancellor or their designee may invite the appellant and other persons as they deem appropriate to appear before them to make statements and respond to questions. The student may request the Chancellor or their designee to invite persons to testify if there is new evidence; and

104.17.7. The Chancellor or their designee has the authority to approve, reject, or modify the decision in question. The Chancellor or their designee may impose less severe sanctions as well as more severe sanctions.

104.17.8. The Chancellor or their designee issues the Final Determination. There is no other university appeal.

105. **Staff Appeals:** An employee may appeal a determination of responsible or not responsible and any sanction to the Office of Administrative Hearings.

105.1. University Requirements to Notify Grievant of Appeal Rights

105.1.1. The Final University Decision shall inform the Grievant in writing of any appeal rights through the Office of Administrative Hearings for contested cases issues.

105.1.2. The Grievant must be specifically informed of the following:

101.1.2.a. The appeal is made by filing a “Petition for a Contested Case” hearing with the Office of Administrative Hearings;

101.1.2.b. The appeal to the Office of Administrative Hearings must be filed within 30 calendar days after the Grievant receives the Final University Decision; and

101.1.2.c. A fee is charged for filing a Petition for a Contested Case Hearing.

105.2. Grievant Access to the Office of Administrative Hearings

105.2.1. If the Grievant is not satisfied with the Final University Decision, the Grievant may file a Petition for Contested Case Hearing in the Office of Administrative Hearings in cases where the grievable issue may be appealed. An Administrative Law Judge will conduct a hearing and render a Final Decision.

105.2.2. A Petition for Contested Case Hearing must be filed within 30 calendar days after the Grievant receives the Final University Decision. The Grievant may file the appeal at:

Office of Administrative Hearings

1711 New Hope Church Road, Raleigh, NC 27609 (Physical Address)

6714 Mail Service Center, Raleigh, NC 27699-6700 (Mailing Address)

(919) 431-3000

101.2.3 Hearing procedure requirements and filing form (OAH Form H-06A) can be obtained from the Office of Administrative Hearings at: <http://www.ncoah.com/hearings/> or by calling (919) 431-3000.

106. **Faculty Appeals:**

106.1. If the Sexual Harassment Hearing Board results in a determination of responsibility against a faculty Respondent, who is the beneficiary of institutional guarantees of tenure, the Hearing Board’s sanction shall be referred to the Vice Chancellor for Academic Affairs for consideration of appropriate disciplinary sanction, if any.

106.2. Both parties may request an appeal in writing to the chair of the Faculty Hearing Committee within five (5) days after notification of the sanction decision.

106.3. The Faculty Hearing Committee, as an appeal board, considers requests for appeals regarding sanctions, such as, discharge or the imposition of serious sanctions, non-reappointment, or termination of employment. See Faculty Handbook.

106.4. In proceedings under §603 of *The Code* involving imposition of serious sanctions based upon the Sexual Harassment Resolution Process, the Hearing Board’s written determination may be included as evidence of the grounds for the sanction; however, the finding(s) of responsibility by the Sexual Harassment Hearing Board is not subject for review.

106.5. In determining the appropriateness of the sanction, the Faculty Hearing Committee will use the following standard of evidence: clear and convincing.

106.6. Section 611 of *The Code*: The conclusions of the Sexual Harassment Complaint Resolution Process regarding responsibility for violation of policy are not grievable under Section 611 of *The Code*.

### **107. Long-Term Remedies/Actions**

107.1. Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.

107.2. These remedies/actions may include, but are not limited to:

107.2.1. Referral to counseling and health services

107.2.2. Referral to the Employee Assistance Program

107.2.3. Education to the community

107.2.4. Permanent alteration of housing assignments

107.2.5. Permanent alteration of work arrangements for employees

107.2.6. Provision of campus safety escorts

107.2.7. Climate surveys

107.2.8. Policy modification

107.2.9. Provision of transportation accommodations

107.2.10. Implementation of long-term contact limitations between the parties

107.2.11. Implementation of adjustments to academic deadlines, course schedules, etc.

107.3. At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

107.4. When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by the UNC Pembroke to the Respondent.

### **108. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

108.1. All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the final Hearing Board and/or the Office of Human Resources.

108.2. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from UNC Pembroke and may be noted on a student's official transcript.

108.3. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **109. Recordkeeping**

109.1. In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept indefinitely, or as required by state or federal law or institutional policy, by the Hearing Facilitator and the Title IX Coordinator.

### **110. Disabilities Accommodation in the Sexual Harassment Resolution Process**

110.1. UNC Pembroke is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at UNC Pembroke. Anyone needing such accommodations or support should contact the Director Accessibility

Resource Center, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

**111. Revision of the Sexual Harassment Policy and Regulation**

111.1. These policies and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. UNC Pembroke reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

111.2. The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

111.3. The Title IX Coordinator may also vary procedures materially with notice (on the UNC Pembroke website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

111.4. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.

111.5. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.

111.6. If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

111.7. This document does not create legally enforceable protections beyond the protection of the background state and federal laws, which frame such policies and codes, generally.



**APPENDIX A**  
**STATEMENT OF THE RIGHTS OF THE PARTIES**

1. The right to an equitable investigation and resolution of all credible allegations of prohibited sex-based harassment or discrimination made in good faith to UNC Pembroke officials.
2. The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
3. The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) and any attendant adjustments needed to clarify potentially implicated policy violations.
4. The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
5. The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
6. The right to be treated with respect by UNC Pembroke officials.
7. The right to have UNC Pembroke policies and procedures followed without material deviation.
8. The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
9. The right not to be discouraged by UNC Pembroke officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
10. The right to be informed by UNC Pembroke officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by UNC Pembroke authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
11. The right to have allegations of violations of this Policy responded to promptly and with sensitivity by UNC Pembroke law enforcement and/or other UNC Pembroke officials.
12. The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
13. The right to a UNC Pembroke-implemented mutual no-contact order (or a no-trespass order against a non-affiliated third party) when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
14. The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of sexual discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs

to occur before this option is available. Such actions may include, but are not limited to:

- a. Relocating an on-campus student's housing to a different on-campus location
  - b. Assistance from UNC Pembroke staff in completing the relocation
  - c. Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - d. Transportation accommodations
  - e. Visa/immigration assistance
  - f. Arranging to dissolve a housing contract and a pro-rated refund
  - g. Exam, paper, and/or assignment rescheduling or adjustment
  - h. Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - i. Transferring class sections
  - j. Temporary withdrawal/leave of absence (may be retroactive)
  - k. Campus safety escorts
  - l. Alternative course completion options.
15. The right to have UNC Pembroke maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair UNC Pembroke's ability to provide the supportive measures.
  16. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
  17. The right to ask the Investigator and Hearing Board members to identify and question relevant witnesses, including expert witnesses.
  18. The right to provide the Investigator and Hearing Board members with a list of questions that, if deemed relevant by the Investigator and/or Hearing Board Chair, may be asked of any party or witness.
  19. The right not to have irrelevant prior sexual history or character admitted as evidence.
  20. The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  21. The right to fair opportunity to provide the Investigator with their account of the alleged misconduct and have that account be on the record.
  22. The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
  23. The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
  24. The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
  25. The right to regular updates on the status of the investigation and/or resolution.



26. The right to have reports of alleged Policy violations addressed by Investigators, the Title IX Coordinator, and Hearing Board members who have received at least five (5) hours of relevant annual training.
27. The right to a Hearing Board that is not single-sex in its composition<sup>23</sup>.
28. The right to preservation of privacy, to the extent possible and permitted by law.
29. The right to meetings, interviews, and/or hearings that are closed to the public.
30. The right to petition that any UNC Pembroke representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
31. The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
32. The right to have an attorney/non-attorney advocate of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
33. The right to have the UNC Pembroke compel the participation of faculty and staff witnesses.
34. The right to the use of the appropriate standard of proof, preponderance of the evidence, to make a finding regarding responsibility after an objective evaluation of all relevant evidence.
35. The right to be present, including presence via remote technology, during all testimony given and evidence presented during a grievance hearing.
36. The right to have an impact statement considered by the Hearing Board Members following a determination of responsibility for any allegation, but prior to sanctioning.
37. The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
38. The right to be informed in writing of when a decision by UNC Pembroke is considered final and any changes to the sanction(s) that occur before the decision is finalized.
39. The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by UNC Pembroke.
40. The right to a fundamentally fair resolution as defined in these procedures.

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<sup>23</sup> UNC Pembroke will make best effort to comply with non-single-sex hearing boards, however, this may prove problematic during summer months when most faculty are not available for participation on hearing boards and our Grievance Process Pool is limited.