

# **Advisory Group Recommendations Regarding Policy on Prohibited Discrimination, Harassment and Related Misconduct**

## **Background**

The Policy on Prohibited Discrimination, Harassment and Related Misconduct requires an annual review of the policy, stating that:

The Equal Opportunity and Compliance Office and Title IX Compliance Coordinator will review this Policy on at least an annual basis, with the assistance of an advisory group consisting of student, faculty, staff, and community representatives selected by senior leadership of that office. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution process (including as to the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed). The review will include the opportunity for individuals affected by the Policy to provide feedback and will incorporate an aggregate view of reports, resolution, and climate. The Equal Opportunity and Compliance Office will prepare an annual report, publicly available, which will include recommendations and steps taken to improve the delivery of services and the effectiveness of the Policy and procedures.

To that end, Senior Associate Vice Chancellor of Workforce Strategy, Equity, and Engagement Becci Menghini, charged the advisory committee (members listed at end of document) to conduct the aforementioned policy review.

The advisory group sought feedback from a wide range of individuals, departments, and involved units. To gather feedback from those most affected by the policy, the advisory group worked with a faculty member to conduct private interviews with both reporting and responding parties (students only) who participated in the procedures to how assess their experiences within the policy met or did not meet their expectations. The faculty member offered interviews to 33 individuals<sup>1</sup> and aggregated their feedback, which was then reported back to the advisory committee. The feedback collected was very open-ended, thereby allowing participants to talk about what worked for them about the process, what challenged them, and any changes they would recommend be made in the future.

The advisory group also invited feedback from University staff representing a variety of departments on the implementation of the policy. Staff representing the Equal Opportunity and Compliance Office, the Carolina Women's Center, the Ombuds Office, Student Wellness, Campus Health, and the Office of the Dean of Students all

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<sup>1</sup> All of the reporting and responding parties (33 individuals) who went through the adjudication process, were offered the opportunity to participate, 26 opted in to this evaluation study. Of those, 5 people ultimately chose to participate in the interviews. Interviews ranged in duration from 45 minutes – 120 minutes. Both reporting and responding parties participated.

participated. Additionally, the advisory group conducted open-ended feedback and listening sessions, during which they invited feedback from Carolina Housing staff, student leaders, and advocacy groups.

The Advisory Committee compiled this range of feedback and held a series of meetings during which they drafted the following recommendations. The recommendations are grouped to reflect proposed changes to the Policy, to the student procedures that support the Policy, and to the communications and marketing associated with the Policy and the work of the EOC office more generally.

### **Recommendations: Policy**

The following recommendations represent language or structure changes to the written policy that could better meet the expectations of both reporting and responding parties, as well as partner organizations involved in the support and resolution functions associated with the policy.

1. On page 1, combine the sections “reason for policy” and “policy statement,” placing “reason for policy” first, as it shows the philosophical commitment of the University, which the advisory committee believed should be elevated within the document. Then, follow with the “policy statement.”
2. Since the drafting of the policy, the University has adopted updated references to employee categories. Add web links defining EHRA/SHRA (delete SPA/EPA) throughout the policy and procedures.
3. Expressly state that the policy additionally applies to minors and contractors (include age range for minors). Procedures need to be covered in subsequent review processes. As a related issue, but beyond the scope of this review, the language in University contracts should be added to reference this policy.
4. Jurisdiction: in order to match guidance from the Office for Civil Rights, add language in this section to expressly state that jurisdiction includes behavior that is “against a student” and/or impacts the educational environment or activity falls under University jurisdiction.
5. During the drafting of the policy, there was intentionality given to making sure that reporting options were broad; however, in the end, we advise that options be scaled back and steered to the primary response units. Insert a new chart with the primary resources (EOC, Department of Public Safety, confidential, medical options elevated).
6. Make definition of “harassment” consistent throughout the Policy (different definitions appear throughout Policy). The current definition on page 6 includes more educational information that can be pulled out and used elsewhere, while the page 8 gender harassment definition can refer back to the page 5 definition for consistency.
7. Add language to emphasize that attempted offenses fall under “prohibited conduct” section for sexual exploitation and any other related offenses. Consider inserting word “attempt” on page 8 in the first sentence of the “exploitation” definition, for example.

8. Switch order of “Reporting by University Employees” and section and “Privacy and Confidentiality” section (pages 13 & 14) to improve the flow of the sections for the reader.
9. Ensure alignment in definitions of “consent,” “incapacitation,” and “stalking” with VAWA definitions.
  - a. Add link to FERPA policy. Add word “significant” to FERPA definition.
  - b. Consent: Delete term “conscious” from definition, as it appears redundant. Consider adding language to reflect that the responding party will be held to a “reasonable sober person” standard in evaluating whether or not he or she could have known that he or she did not have consent.
  - c. Incapacitation: Tighten this definition to list what the indicators of “incapacitation” are or could be, which could help students and staff understand the definition more easily. Potentially separate out into another section (potentially as a sidebar or as supplemental information only) information that is provided for educational purposes only (such as the information about “intoxication,” which is different from the definition of “incapacitation”). Specific edits to the definition could include:
    - i. Adding “unresponsive” to the second sentence of the definition.
    - ii. Adding factors that may indicate incapacitation, such as the following example from Southern Louisiana University: “Incapacitation, an individual is considered to be incapacitated if, by reason of mental or physical condition, the individual is manifestly unable to make a knowing or deliberate choice to engage in sexual activity. Being drunk or intoxicated can lead to incapacitation; however, someone who is drunk or intoxicated is not necessarily incapacitated, as incapacitated is a state beyond drunkenness or intoxication. Individuals who are asleep, unresponsive, or unconscious are incapacitated. Other indicators that an individual may be incapacitated include, but are not limited to, inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, vomiting, or inability to perform other physical or cognitive tasks without assistance.”
  - d. Stalking: insert “ongoing” after “repeated” in definition. Is there any way to include “unwanted pursuit” behavior to catch things that happen that are pre-stalking?
10. Add and define the following terms: “reasonable accommodation,” “failure to accommodate,” and clarify difference between “coercion” and “force” (definitions are the same in policy).
11. Change policy formatting to clearly outline the elements of each charge. Be sure to list potential violations in each Notice of Investigation letter.
12. The Advisory Group recommends more examination of the concept of “retaliation” and deleting “in good faith” from definition. Strengthen the Notice Of Investigation letter to highlight and inform the responding party of the policy prohibition against retaliation.
13. Interim Protective Measures section recommendations:

- a. Title IX should take action on interim measures on its own authority, as this function is currently managed by the Office of the Dean of Students and can be consolidated within Title IX.
- b. After the review of the Emergency Evaluation Action Committee concludes, be sure to coordinate EOC-related threat assessments with relevant changes to the EEAC policy.
- c. Need to address what happens if a No-Contact Order is violated – recommend creating a section of the policy to address “interference” with the policy (conduct process can be regarded as an example of how to do this).
- d. Add a section “E” to policy to address violations of interim measures and a failure to comply with sanctions.

### **Recommendations: Procedures**

The below recommendations address ways in which the implementation of the policy could be potentially improved. These recommendations are intended to improve clarity, lessen the ambiguity parties sometimes feel, and ensure that standard practice lines up with the intent of the procedures.

1. Streamline reporting options (same as policy). Create a clear chart of primary response units as reporting options.
2. Replace “formal” and “informal” terms used to describe cases or process.
3. Rewrite section V. (reporting) to describe current practices more fully.
4. On page 12, include language that reflects that the investigators may have a role in the initial assessment (delete the words “after assessment” on page 12).
5. Expressly state what the communication relationship is between the investigator and students’ attorneys. Delete “at all times” from page 26, 4<sup>th</sup> paragraph. Delete sentence starting with “even if.” Eliminate first sentence of last paragraph on page 26, regarding scheduling. Move the last sentence on page 27 (regarding attorney expenses) earlier in the section.
6. Examine role of investigators, particularly as it relates to the outcome and hearing processes. There is significant pressure on investigators to move many facets of each case forward, from the intake to fact-finding to making a determination of a potential policy violation and potentially to defend that finding in a hearing. Managing these many responsibilities on a single position is taxing on the investigators and centralizes many responsibilities in one pair of hands. We recommend that the University consider adding a new role to balance out the expectations; create a “prosecutor” role so the investigator does not bear brunt of carrying the University’s case into the hearing.
7. Outcome conference: build in space for small adjustments to sanctions or details in the outcome conference, as parties may wish. Potentially include new “prosecutor” role in this outcome conference. Could there be a “plea” option at this point in the process? Will require clarity about who has the authority to make decisions about sanctions.
8. Appeals: change language to reference that the gatekeeper function managed by the Dean of Students, not EOC. Ensure symmetry for both parties.

9. Insert language around page 17 about parties' inability to waive a hearing with silence or passivity. Insert language about notification of hearings and how hearings will be handled when one or both parties refuse to participate.
10. Add section in the jurisdiction section that addresses how other University policies may apply.
11. Adapt "interim protective measures" language to include "supportive measures."
12. Clarify roles of Report and Response Coordinators vis-a-vis students' perceptions – insert language about their "concierge service."
13. Expressly state that investigators will not look at impact statements until a determination is made and will be shared only if there is a finding of responsibility. Include guidance about what should be included in an impact statement in the written procedures. Encourage parties to speak to the factors that impact sanctions.
14. Review of draft investigation report: Need to build in time for investigators to address new information received in this part of the process.
15. Page 16: delete last two sentences of second paragraph in draft report review section.
16. Investigators: Where possible, have investigators work in pairs to reduce isolation and ensure appropriate support on each case.
17. Fortify the sanctioning process. Many parties suggested that they believed that the sanctioning process was not strong enough (wanted to see more severe sanctions). In several instances, sanctions coming out of the investigative process were more severe than those coming out of the hearing process, and we recommend adding in "presumptive/usual" sanctions to policy to give hearing panel a starting point in order to provide better guidance to the sanctioning phase of the process.
18. Increase training for hearing panels on how to develop sanctions. Training can include impact of sanctions, factors to consider, sanctions.
19. Provide more transparency about timeframes: Concerns about implementation and transparency, especially regarding extensions, were raised by several parties. Need to work to clarify communications about timelines and better explain possibility of, and reasons for, extensions.
20. Page 16: edit the sentence with the passive voice "policy violation occurred."
21. Liaisons: staff suggest that there is a potential gap in information sharing between EOC and the UNC Police Department. Adding a liaison position between the two departments would potentially help close information gaps, identify opportunities for protocol development, and to strengthen the criminal and civil University processes.

Ongoing committee work: Given the depth of this Policy review, and the limited numbers of people who are subject to the procedural aspects of this policy each year, conducting a thorough Policy review every year will be cumbersome and is unlikely to produce significant changes. We recommend allowing the policy to be implemented for 2-3 years before conducting additional reviews (every 2-3 years) in order to assess a larger body of casework. Additionally, we recommend that there be a standing advisory committee of some sort (including students, faculty, and staff) that can provide time-sensitive feedback and guidance to EOC and Title IX staff. If this recommendation is accepted, the review language in the Policy should be changed to reflect the new process.

### **Recommendations: Communications/Marketing**

The following are comments that the committee heard regarding marketing, publications, and other communications issues that we offer for future work.

1. Expand focus of publicity. Policy publicity focuses on Title IX more than other protected statuses; this focus needs to be expanded.
2. Proactively explain what happens after a report is made – demystify next steps.
3. Better coordinate Clery and Title IX training.
4. Expressly state that Responsible Employees must share the name of reporting parties.
5. Simplify language used in materials. Still hard to read language of policy and procedures.
6. Evaluate need to update partner materials. Housing contracts may need to be amended to include any language about interim protective measures.
7. Create guides/flowcharts for each party.
8. Address the myths. Can we create a common misperceptions page?
9. Increase capacity for students to understand where their cases are in the caseflow at any given moment.

### **Future Considerations**

The review committee suggests that EOC staff look at these issues moving forward, but acknowledge these are complex issues that require consideration beyond the scope of the Advisory Group.

1. Are there possible confidential/advocacy options for the responding party?
2. Voluntary resolution: there is not enough scope within the policy to cover everything voluntary resolution could potentially address. Somewhere we need a step short of a hearing that allows for someone short of a hearing to resolve the case. There is some value to having parties sit in front of someone and review case, and also a value to having process that does not impose disciplinary sanction. Can we open the voluntary resolution process to impose a disciplinary sanction, potentially? If so, how could we preserve elements of a non-disciplinary process? All of these options require careful consideration and a focus on alignment with General Administration disciplinary policy.
3. Create more structure to guide the work of the “response team.”
4. Students going through process don’t feel in control; communications should, where possible, help students understand the “why” behind decisions.
5. Need more confidential support people on both sides.
6. Is there a perception among accused students that responding parties are presumed guilty within this process? If so, how can this perception be addressed?
7. Process feels very isolating to all parties, how can this be addressed?
8. How do we support reluctant reporting parties?

### **Additional Issues**

The group identified several other topics that may warrant additional attention, and which relate tangentially to the scope of the Policy review. We encourage campus and EOC

leadership to consider more study of these items, and to evaluate their remedy or implementation as supportive of other recommendations outlined in this report.

- Safety of Title IX team and the need for increased administrative staff
- EOC/Title IX needs accessible, central, private, secure office space
- Secondary trauma resources are needed for staff
- Critical incident stress debriefing/long term support for staff
- Liaison position with UNC Police Department
- Consider how to address issue of when students, faculty, and staff wish to have their preferred name and/or gender identity within the University database systems.

### **Advisory Committee Membership**

Christi Hurt, Assistant Vice Chancellor and Chief of Staff, Student Affairs, Chair

Katie Nolan, Interim Title IX Compliance Coordinator

Jonathan Sauls, Dean of Students

Kara Simmons, Associate Vice Chancellor and Senior University Counsel, Office of University Counsel

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