

EOC Annual Hearing Training

The background of the slide is a blue-tinted photograph of a campus. In the foreground, there is a classical building with a prominent dome and several columns. The building is partially obscured by the large, leafy branches of trees that fill the upper and side portions of the frame. The overall atmosphere is academic and serene.

Policy on Prohibited Discrimination, Harassment, & Related Misconduct (PPDHRM Policy)

EOC Policies

Policy on Prohibited
Discrimination, Harassment
and Related Misconduct

Policy on Prohibited Sexual
Harassment Under Title IX

[SAFE.UNC.EDU](https://safe.unc.edu) | [EOC.UNC.EDU](https://eoc.unc.edu)



Prohibited Conduct

Prohibits Discrimination & Harassment based on a protected Status

- Age
- Disability
- Gender
- Gender Expression
- Gender Identity
- Genetic Information
- Race
- Color
- National Origin
- Religion
- Sex*
- Sexual Orientation
- Veteran Status

Prohibits Related Misconduct

- Interpersonal (Relationship) Violence
- Stalking
- Retaliation

Sex Discrimination includes:

- Sexual Harassment
- Sexual Assault/Sexual Violence
- Sexual Exploitation

Jurisdiction

Conduct Occurring On Campus



Within a University Program or Activity

- Sexual violence during a study abroad trip
- Online including class meetings
- Academic internships
- Away games for student athletes

Behavior Impacting the Campus Community

“Has or is reasonably likely to have continuing adverse effects or to create a hostile environment for students, employees, or third parties while on campus or in any University employment or education program or activity.”

Discrimination

Defined as:

Any unlawful distinction, preference, or detriment to a person as compared to others **based on protected status** that is serious enough to unreasonably interfere with or limit:

1. Access to or conditions of employment
2. Access to or benefit from educational programs or activities

Protected Status

Age

Disability

Gender

Gender
Expression

Gender
Identity

Genetic
Information

Race

Color

National
Origin

Religion

Sex

Sexual
Orientation

Veteran
Status

Harassment

Defined as:

A type of discrimination that occurs when verbal, physical, electronic, or other conduct **based on an individual's protected status** interferes with that individual's work environment, educational environment, participation in a University program or activity, or receipt of legitimately-requested services, thereby creating

- Quid Pro Quo Harassment or
- Hostile Environment Harassment

Hostile Environment Harassment

Defined as:

Unwelcome Conduct:

- based on a protected status
- so severe, persistent, or pervasive
- alters the conditions of education, employment or participation in a University program or activity
- creates an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive

An isolated incident, unless sufficiently severe, does not amount to Hostile Environment Harassment.

Sexual Assault / Sexual Violence

Defined as: Having or attempting to have sexual contact without consent

Sexual Contact

Sexual Contact includes:

- Any intentional touching or penetration of another person's clothed or unclothed intimate body parts, including but not limited to the buttocks, anus, groin, genitalia, or breast, by another with any part of the body or any object in a sexual manner
- Causing another person to touch their own or another's body in the manner described above

Consent at UNC

Communication of an **affirmative, conscious, and freely made decision** to engage in agreed upon forms of sexual contact.

An **outward demonstration**, through understandable words or actions, that conveys a **clear willingness** to engage in sexual contact.

Consent is Not . . .

Assumed because the partner:

- Is silent
- Did not say no
- Is passive
- Is not resistant
- Has had sexual contact with the other person before
- Agreed to another form of sexual contact

Obtained through:

- Using force or a weapon to compel someone to engage in sexual activity
- Using coercion to compel someone to engage in sexual activity

Present if:

- The partner is incapacitated
 - By disability
 - By age
 - Because they are asleep, unconscious, or physically helpless
 - By drugs or alcohol

Incapacity

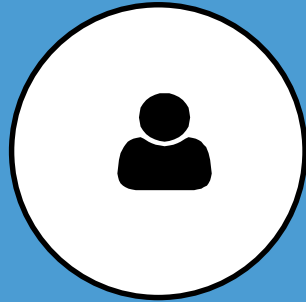
Unable to make a knowing or deliberate choice to engage in Sexual Contact

Types of Incapacity



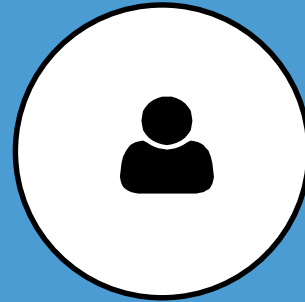
Disability

- Mental
- Intellectual
- Physical



Age

- Under the legal age to give consent



Physical

- Asleep
- Unconscious
- Intermittently conscious
- Physically helpless



Induced

- Drugs
- Alcohol

Incapacity: Drugs & Alcohol

- More than intoxication, impairment in judgment, or being drunk
- Question is whether drugs or alcohol has rendered the reporting party **physically helpless** or **substantially incapable of**
 - Making a knowing and deliberate choice to engage in sexual contact;
 - Making decisions about the potential consequences of sexual contact;
 - Appraising the nature of their own conduct;
 - Communicating consent to sexual contact; or
 - Communicating unwillingness to engage in sexual contact
- Indicators of incapacitation:
 - Inability to communicate coherently
 - Inability to dress or undress without assistance
 - Inability to walk without assistance
 - Slurred or incomprehensible speech
 - Loss of coordination
 - Vomiting
 - Inability to perform physical or cognitive tasks without assistance

Consent: Force

- Force
 - The use of physical violence, intimidation, or express or implied threats of physical or emotional harm that would cause a reasonable person in similar circumstances and with similar identities to fear immediate or future harm and that is employed to persuade or compel someone to engage in Sexual Contact
 - Includes exerting control over another person through the use of physical force, including hitting, punching, slapping, kicking, restraining, strangling, or brandishing a weapon

Consent: Coercion

- Coercion

- The use or attempted use of an unreasonable amount of pressure and/or oppressive behavior
- Includes express or implied threats and/or intimidation that wrongfully impair a person's ability to make a clear and willing choice to engage in Sexual Contact

- Examples of Coercion

- Use of physical intimidation such as blocking access to an exit
- Causing the deliberate incapacitation of another person
- Conditioning an academic benefit or employment advantage on submission to the sexual contact
- Threatening to harm oneself if the other party does not engage in sexual contact
- Threatening to disclose an individual's sexual orientation, gender identity, gender expression, prior sexual history, or other personal sensitive information if the other party does not engage in the sexual contact

Sexual Exploitation

Threatening to disclose
someone's sexual
orientation or gender
identity or expression

Observing someone's
nudity or sexual
contact without
consent

Streaming images,
videos, or audio of
nudity or sexual
contact without
consent

Distributing images,
videos, or audio of
nudity or sexual
contact without
consent

Prostituting another
individual

Knowingly exposing
someone to an STI

Knowingly failing to use
agreed-upon method of
contraception without
consent

Inducing incapacitation
to take sexual
advantage of another

Interpersonal Violence & Stalking

Interpersonal Violence:

Physical, sexual, emotional, economic, or psychological actions by an intimate partner, spouse, family member, or roommate that would cause fear or substantial emotional distress in a reasonable person in similar circumstances or similar identities

- Can include violence or threats directed toward a family member or pet

Stalking:

A course of conduct directed at a specific person under circumstances that would cause a reasonable person in similar circumstances and with similar identities to fear for the person's safety or the safety of others or to experience substantial emotional distress

- Can be direct, indirect, or through other parties
- Can include following, monitoring, observing, surveilling, threatening, communicating to or about a person, or interfering with a person's property

Complicity & Retaliation

Complicity

Defined as: Any activity that knowingly helps, promotes, or encourages another person to engage in any conduct prohibited by the Policies

Retaliation

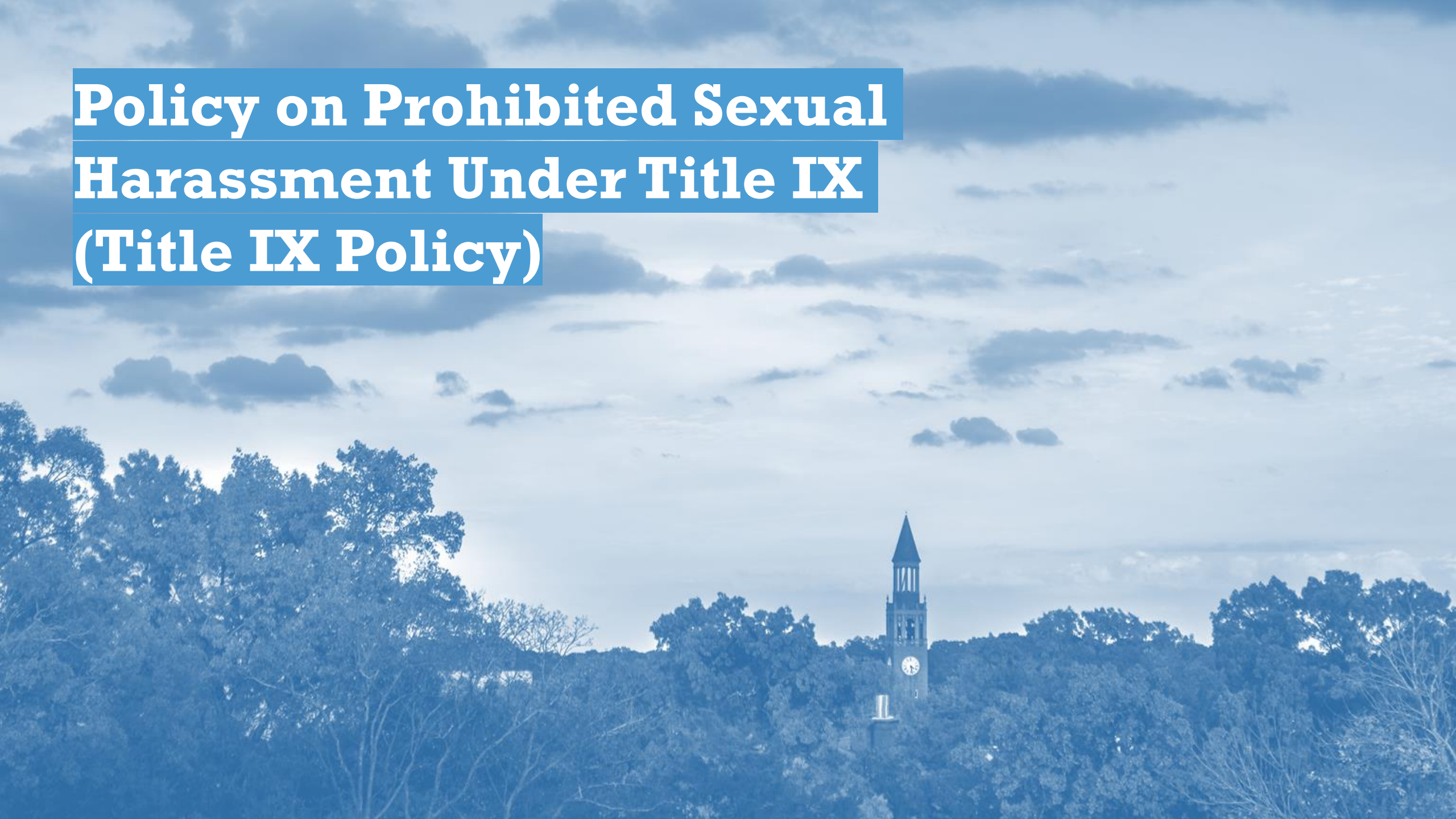
Defined as: An action that would discourage a person from engaging with EOC

- Intimidation, threats, coercion
- Adverse employment or educational actions

Other Policy Prohibitions

- Violate restraining orders or no-contact orders imposed by government or campus authorities or any other Supportive Measures established by University personnel;
- Violate the terms of disciplinary proceedings or of any sanction imposed pursuant to such proceedings;
- Engage in acts of bad faith or dishonesty intended to interfere with the resolution process and the procedures established under Equal Opportunity and Compliance Office policies.
 - Includes intentionally and unreasonably delaying the resolution process, deliberately furnishing false or misleading information to University personnel acting in the scope of their official duties, or authorizing or instructing others to engage in such acts on one's behalf

Policy on Prohibited Sexual Harassment Under Title IX (Title IX Policy)



Prohibited Conduct

TITLE IX SEXUAL HARASSMENT

- Conduct on the basis of sex that satisfies one of the following:
 - Quid pro quo harassment by an employee
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a University program or activity

SPECIFIC FORMS OF SEXUAL HARASSMENT

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Jurisdiction



[SAFE.UNC.EDU](https://safe.unc.edu) | [EOC.UNC.EDU](https://eoc.unc.edu)

Six Questions to Assess

- When: Did the reported conduct occur on or after August 14, 2020?
- Where: Was the person impacted by the reported conduct in the United States at the time of the reported conduct?
- Who (impacted party): Was the impacted person participating in or attempting to participate in a UNC program or activity at the time of the reported conduct?
- Who (accused party): Did UNC exercise substantial control over the person accused of the reported conduct?
- How: Did UNC exercise substantial control over the location, event, or circumstances in which the reported conduct occurred?
- What: Does the reported conduct meet one of the policy definitions?

Education Program or Activity

Defined as:

Locations, events, or circumstances for which the University exercised substantial control over both the Responding Party and the context in which the Sexual Harassment occurred at the time of the alleged incident, which includes any building owned or controlled by a student organization that is officially recognized by the University.

UNC's Educational Programs & Activities

- University workplaces
- Fraternity houses for recognized fraternities
- University classes (remote and in-person)
- Educational programs outside Chapel Hill but in the U.S.
- Athletics teams (including intramural)
- Programs offered or hosted by a University entity
- Campus housing
- Campus dining halls
- Campus Rec fitness programs

Quid Pro Quo Harassment by an Employee

Defined as:

An employee conditioning the provision of University aid, benefits, or services on the Reporting Party's participation in unwelcome sexual contact

Title IX Harassment

Defined as:

Unwelcome conduct based on sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a University education program or activity

Sexual Assault

Defined as:

Any of the following sexual acts directed against another person, without consent, including instances where the person is incapable of giving consent.

- Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of that person.
- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the person, including instances where the person is incapable of giving consent because of age or temporary or permanent mental incapacity.
- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Dating Violence

Violence committed by a Responding Party who is or has been in a social relationship of a romantic or intimate nature with the Reporting Party. The existence of such a relationship is determined based on consideration of:

- The length of the relationship;
- The type of relationship;
- and the frequency of interaction between the persons involved in the relationship.

Domestic Violence

Felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the Reporting Party;
- By a person with whom the Reporting Party shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the Reporting Party as a spouse or intimate partner;
- By a person similarly situated to a spouse of the Reporting Party under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth Reporting Party who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Forcibly

Defined as:

- Using physical violence, intimidation, or express or implied threats of physical or emotional harm that would cause a reasonable person in similar circumstances and with similar identities to fear immediate or future harm.
- Physical violence entails exerting control over another person through the use of physical force, including but not limited to hitting, punching, slapping, kicking, restraining, strangling, or brandishing a weapon.

Stalking

Engaging in a course of conduct based on sex directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Retaliation

For purposes of the Title IX Sexual Harassment Policy, **Protected Activity** also includes **refusing to participate** in any manner in an investigation, proceeding, or hearing under the Title IX Procedures.

Retaliation may include charges against an individual for code of conduct violations that do not involve sex discrimination or Title IX Sexual Harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of the resolution process does not constitute Retaliation. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Hearing Participants



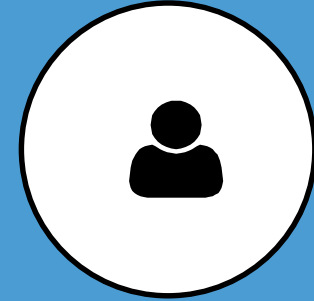
Advocates

- Attorney or Non-Attorney Advocate
- Not required
- At party's own expense
- May participate to extent of party



Support Persons

- Provides emotional, logistical, or other assistance
- Non-participant in process
- Cannot be a fact witness



Hearing Advisor

- Title IX hearings only
- Required by the regulations if party does not have an advocate
- Provided by the University
- Present only to conduct cross-examination

Policy Comparison

PPDHRM Policy

- Jurisdiction
- Policy Definitions
 - Sexual Harassment
 - Retaliation
- Adjudication Process
 - EOC Investigators conduct investigation, make determination as to responsibility, and recommend sanctions, if any
 - If Investigators' determination is appealed, Hearing Panel makes determination as to responsibility and sanctions, if any

Title IX Policy

- Jurisdiction
- Policy Definitions
 - Incorporates PPDHRM Policy definitions of sexual contact, consent, and incapacitation
- Adjudication Process
 - EOC Investigators gather evidence and summarize in report
 - Hearing Panel makes determination as to responsibility and sanctions, if any

Sanctions

Disciplinary Action

- Expulsion
- Permanent Suspension
- Suspension for Definite or Indefinite Period
- Probation (Definite or Indefinite Period)

Corrective Measures

- Educational Requirements
- No Contact Orders
- Housing Restrictions
- Other measures, as appropriate

Sanctions Factors

In determining the appropriate course of action, the Hearing Panel shall consider the following factors:

- the nature and violence of the conduct at issue;
- the effects of the conduct on the Reporting Party;
- the effects or implications of the conduct on the educational mission, work environment, the community, or the University;*
- whether the conduct involved an abuse of power or authority;**
- prior misconduct by the Responding Party, including the Responding Party's relevant prior discipline history, both at the University or elsewhere, including criminal convictions;
- whether the Responding Party has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning and working;*
- protection of the University community; and
- any other mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

Remedies

- Measures taken to restore and preserve the Reporting Party's equal access to the University's educational programs, employment opportunities, or activities by addressing the effects of the conduct on the Reporting Party.
- Purpose is to restore to the Reporting Party, to the extent possible, all benefits and opportunities lost as a result of the Sexual Harassment.
- Remedies may include, but are not limited to, adjustment of work or class assignments, location, and/or schedule or recommending a review of a negative performance or grade decision that may have resulted from the conduct that violated the Policy.
- Hearing Panel can recommend.

Written Panel Decision

PPDHRM Policy

- Finding as to whether there is a Policy violation
- Rationale for the result
- Brief summary of the evidence on which the decision is based
- Any sanctions to be imposed
- Date by which any requirements must be satisfied and consequences for failure to satisfy
- Grounds and timeframe for appeals

Title IX Policy

- Identification of the reported conduct potentially constituting sexual harassment
- Description of procedural steps taken from Formal Complaint through determination
- Findings of fact supporting determination
- Conclusions regarding application of TIX Policy to facts
- Determination regarding responsibility and sanction for each instance of reported conduct
- Whether remedies will be provided to the Reporting Party
- Procedures and bases for appeal

Receiving & Responding to a Report

Making a Report to the EOC Office



Resources: Support and Reporting

Confidential

- Counseling and Psychological Services (CAPS)
- Campus Health
- Gender Violence Services Coordinators (GVSCs)
- University Ombuds Office

Private

- Equal Opportunity & Compliance Office (EOC)
- UNC Police Department



HUMAN RESOURCES AND EQUAL OPPORTUNITY AND COMPLIANCE
Equal Opportunity and Compliance

[Make a Report](#)[Request Accommodations](#)[Contact EOC](#)

In an emergency, call 911

[HOME](#)[WHO WE ARE ▾](#)[WHAT WE DO ▾](#)[OUR POLICIES ▾](#)[RESOURCES ▾](#)[WHAT'S NEW ▾](#)[FOR](#)[COVID-19 ACCOMMODATIONS](#)

Report an Incident

IF THERE IS AN IMMEDIATE RISK TO LIFE, SAFETY, OR PROPERTY, PLEASE CALL 911 OR UNC POLICE AT 919-962-8100.

The Equal Opportunity and Compliance Office handles student, employee, and visitor reports of discrimination and harassment based on age, color, disability, genetic information, national origin, race, religion, sex (including gender, gender expression, or gender identity), sexual orientation, and veteran status. This includes reports of sexual misconduct, including sexual harassment and sexual violence. Our office also handles reports of relationship violence and stalking.

Once you submit this form, you may be contacted by someone from the Equal Opportunity and Compliance Office if additional information is needed. Regardless of the nature of your report, the University will ensure that your report is forwarded to the office with responsibility for investigating and addressing it, as appropriate, based on the information you have provided.

Please note that reporting an incident without disclosing your name (i.e., anonymously) will prevent the University from being able to provide you with interim measures (such as academic accommodations, no-contact orders, safe housing options, change of work schedule) because University staff will not be able to contact you. Reporting anonymously may also impact the University's ability to investigate and/or take disciplinary action.

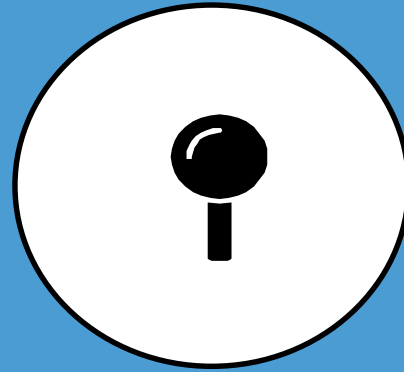
[Report an incident.](#)

What happens after a report?



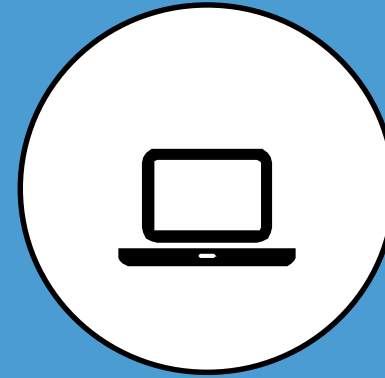
Report

The EOC Office receives a report of protected status harassment or discrimination



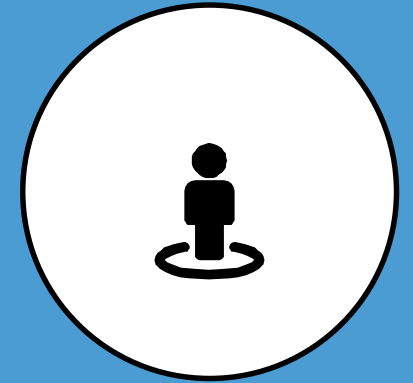
Assessment

EOC staff assess the nature of the allegation, including the reported conduct and the risk to the parties and campus community.



Outreach

EOC staff email the impacted person to assess immediate health and safety needs, discuss supportive measures, connect them to confidential support options, and explain reporting options.



Individual's Choice

The impacted person can decide whether to respond to the EOC outreach. The impacted person can use campus and community resources provided, even if they don't respond to EOC.

Role of the Report & Response Coordinators



Report & Response Coordinators (RRCs)

Intake & Assessment

- An RRC is assigned to every report that the EOC Office receives. The RRC serves as the point of contact for all parties related to that report.
- Following outreach, the RRC will connect with the Reporting Party either in-person, by phone, or by Zoom.
- The RRC will gather information, provide information on resources and supportive measures, and discuss options for next steps through the EOC's policies and procedures.
- Not every Reporting Party is interested in an investigation by the EOC Office.

Supportive Measures

- **University No Contact Order**

- If a student is interested in exploring a University-based no contact order, they can contact the EOC. The EOC issues and oversees the order—it is non-disciplinary in nature but may allow for disciplinary action if violated.
- The NCO will remain in effect for as long as the parties are members of the campus community.
- The NCO specifies that parties should not have communication in the following ways:
 - In-person, by phone, through written communication, by electronic means and social media, or through third parties

- **Emergency Housing**

- Options for temporary emergency housing may be available for students on campus.
- The EOC Office works with Housing to secure a Safe Room and may also arrange for permanent room changes.

Traffic Pattern Check

- The RRC will review student schedules to determine if there are overlaps or concerns with other parties.

Supportive Measures

- **Professor Notifications**

- These are emails sent directly to each faculty member (student is CC'd) to let them know the student is working with the EOC Office. We ask that the faculty provide flexibility and understanding that the student is experiencing concerns outside of the classroom. This is not a formal accommodation but helps open the door for the student to follow up about academic concerns and needs without having to disclose their experience.

- **University Approved Absences**

- The EOC Office can provide University Approved Absences for students.
- The RRC may provide UAA for students who have recently experienced an assault, who are going to court, who are participating in an EOC hearing, etc.

***Supportive measures can be requested independent of formal EOC action, or in addition to a request for investigation/voluntary resolution.**

Report & Response Coordinators (RRCs)

Investigation & Resolution

- If the EOC will be investigating a report, the RRC introduces the Reporting Party to EOC investigators by email to schedule their initial interview.
- The formal investigation begins when the Reporting Party and Responding Party receive the Notice of Investigation (NOI) from the EOC Office.
- The RRC will reach out to the Responding Party prior to the NOI to discuss EOC policy and procedures and provide information on resources and supportive measures.
- The RRC maintains contact with parties throughout the investigation process.
 - Outcome conference
 - Communication about appeal options

Report & Response Coordinators (RRCs)

Sanctions & Beyond

- If a Responding Party has violated EOC Policy and is required to meet with EOC staff, the RRC is responsible for that education conversation.
- If suspended, the RRC facilitates the petition for reinstatement process.

Trends



EOC Investigation Process



HUMAN RESOURCES AND
EQUAL OPPORTUNITY AND COMPLIANCE

Role of the Investigator

Conduct fair and impartial investigations of alleged policy violations under PPDHRM and TIX

- Interview parties and witnesses
- Gather information and evidence
- Evaluate the evidence
- Prepare investigation reports

Trauma Informed Practices

A blue-tinted photograph of a university campus. In the foreground, there are two wooden benches on a paved path. A person is sitting on the right bench, facing away from the camera. The path leads into a large, open area with many large, leafy trees. In the background, there is a brick building with several windows. The sun is shining brightly through the trees in the upper right corner, creating a lens flare effect. The overall atmosphere is peaceful and academic.

Initial Steps in the Investigative Process

- Receive report of alleged misconduct
- Interview Reporting Party
- Assess information provided
- If formal investigation ➡ Draft allegations
- Provide Notices of Investigation to both parties

Develop an Investigative Strategy

- Develop a timeline
- Identify witnesses
- Identify potential evidence
- Organize information

Conducting the Investigation: Interviews

WHO?

- Interview the Responding Party
- Conduct witness interviews
- Conduct follow up interviews as needed

Conducting the Investigation: Interviews

HOW?

- Explain role and provide important information
- Ask open ended questions → LISTEN
- Ask follow up questions for clarification
- Request evidence and contact information for witnesses

Conducting the Investigation: Evidence

What is evidence?

"Something (including testimony, documents, tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to provide the existence or non-existence of a fact."

- *Black's Law Dictionary*

Types of Evidence

Direct

Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.

Circumstantial

Evidence based on inference and not on personal knowledge or observation.

Corroborating

Evidence that differs from but strengthens or confirms what other evidence shows.

Examples of Evidence

Testimony

Text
Messages

Photograph
s

Social
Media Posts

Receipts

Videos

Phone
Records

Medical
Records

Evaluating Evidence



Is it relevant?

Tendency to make a material fact more or less likely to be true.



Is it authentic?

Is the item what it purports to be?



**Is it credible/
reliable?**

Is the evidence worthy of belief?



What weight, if any, should it be given?

Weight is determined by the finder of fact.

Assessing Credibility

- Consistency in account
- Plausibility of account
- Specificity of details
- Corroborating evidence
 - Eyewitnesses
 - Disclosure witnesses
 - Documentary evidence (text messages, photos, etc)



Investigation Challenges

- Unresponsive or uncooperative witnesses
 - voluntary process
 - inability to contact witness
- Barriers to collecting evidence
 - no subpoena power
 - evidence not available and/or destroyed

Investigation Timeline

PPDHRM Policy

- Notices of Investigation
 - 60 business days
- Notices to review draft investigation report
- Option to provide comments and/or additional information to draft investigation report
 - 5 business days
- Investigators consider comments and/or additional information and complete investigation report, including a determination of responsibility
- Notices of Investigative Finding
 - Generally within 5 business days
- Outcome Conferences (optional)

Title IX Policy

- Notices of Investigation
 - 60 business days
- Notices to review directly related evidence
- Option to provide written comments
 - 10 business days
- Investigators consider comments and complete investigation report summarizing relevant evidence
- Notices to review investigation report
 - At least 10 business days prior to hearing
- Hearing to determine responsibility
 - Generally conducted within 25 business days of transmission of evidence

Investigation Reports

PPDHRM Policy

- Procedural History
- Undisputed facts and/or background information
- Sources of information
 - Witnesses interviewed
 - Relevant evidence
- Interview Summaries
- Relevant policy provisions
- Analysis
- Determination
- Recommendations, if any

Title IX Policy

- Procedural History
- Summary of Evidence
 - Background information
 - Sources of information, including witnesses interviewed and relevant evidence collected
- Interview Summaries

Adjudication Process

PPDHRM Policy

- Investigators conduct investigation, make determination as to responsibility, and recommend sanctions, if any

Title IX Policy

- Investigators gather evidence and summarize in report
- Hearing Panel makes determination as to responsibility and sanctions, if any

Appeals

PPDHRM Policy

- If parties agree to the investigators' determination and any recommended sanctions ➡ outcome is final
- If finding of no policy violation is appealed ➡ Administrative Review
- If finding of policy violation and/or sanctions is appealed ➡ Hearing Panel
- Each party has 5 business days to communicate to RRC in writing

Title IX Policy

- Either party may appeal determination of hearing panel within 5 business days
- Appeal must be in writing and include specific grounds:
 - Procedural irregularity that affected the outcome
 - New evidence that was reasonably available that could affect outcome
 - Conflict of interest that affected the outcome
- Appeals Officer will assess

Preponderance of Evidence and Due Process



HUMAN RESOURCES AND
EQUAL OPPORTUNITY AND COMPLIANCE

How Much Evidence?

- What is the “preponderance of the evidence”?
 - Standard in the Procedures: Panel is charged with determining that a Policy violation occurred by a “preponderance of the evidence”
 - From the Procedures (PPDHRM): “A preponderance of the evidence means that it is more likely than not that the conduct occurred.”
 - If the evidence does not meet this standard, there is no Policy violation
 - Has been described as 50% plus a feather or 51% of the evidence

Due Process (Students)

- University students have a property interest in their education
- Based on the existence of this property interest, the University must provide due process before depriving a student of the opportunity to pursue that education (*i.e.*, through suspension or expulsion)
- Courts apply a balancing test to determine the extent of due process rights
- UNC Policy Manual contains basic due process requirements (including hearing requirements) for students who may be suspended or expelled

Due Process (Students)

- Notice and an opportunity to be heard are key elements of due process
 - Notice is provided by the EOC Office
 - Hearing provides the “opportunity to be heard”
- A full “court” type hearing is not required but the Procedures include the opportunity for cross examination of the other party and confrontation of witnesses

Due Process (Students)

Differences between Title IX hearings and hearings under the Policy on Prohibited Discrimination, Harassment, and Related Misconduct (PPDHRM)

- Cross examination
 - Hearing Chair screens and asks questions the parties submit for one another (PPDHRM)
 - Advocates or Hearing Advisors conduct cross examination on behalf of parties; Hearing Panel screens questions for relevance prior to answer (Title IX)
- Confrontation of witnesses
 - Parties (or advocates) generally question witnesses (PPDHRM)
 - Advocates or Hearing Advisors question witnesses (Title IX)

Due Process (Employees)

- More complicated analysis than for students
- Property interest depends on employment type (e.g., faculty vs. non-faculty, SHRA vs. EHRA)
- Often satisfied through the grievance process rather than the EOC hearing process
- BUT, University must follow policy and procedures in handling cases

Questions?



Implicit Bias Training

Bias

- An inclination or prejudice for or against one person or group, especially in a way considered to be unfair



What Does Science Say?

- The brain sees difference as danger
 - Looks for patterns (200,000x) more than conscious minds
- Implicit bias is hard-wired
- Unconscious brain
 - Looks for patterns (200,000x) more than conscious minds
 - Creates expectations and begins to wire them together
 - Ingrains stereotypes within our subconscious

A Closer Look at Our Biases

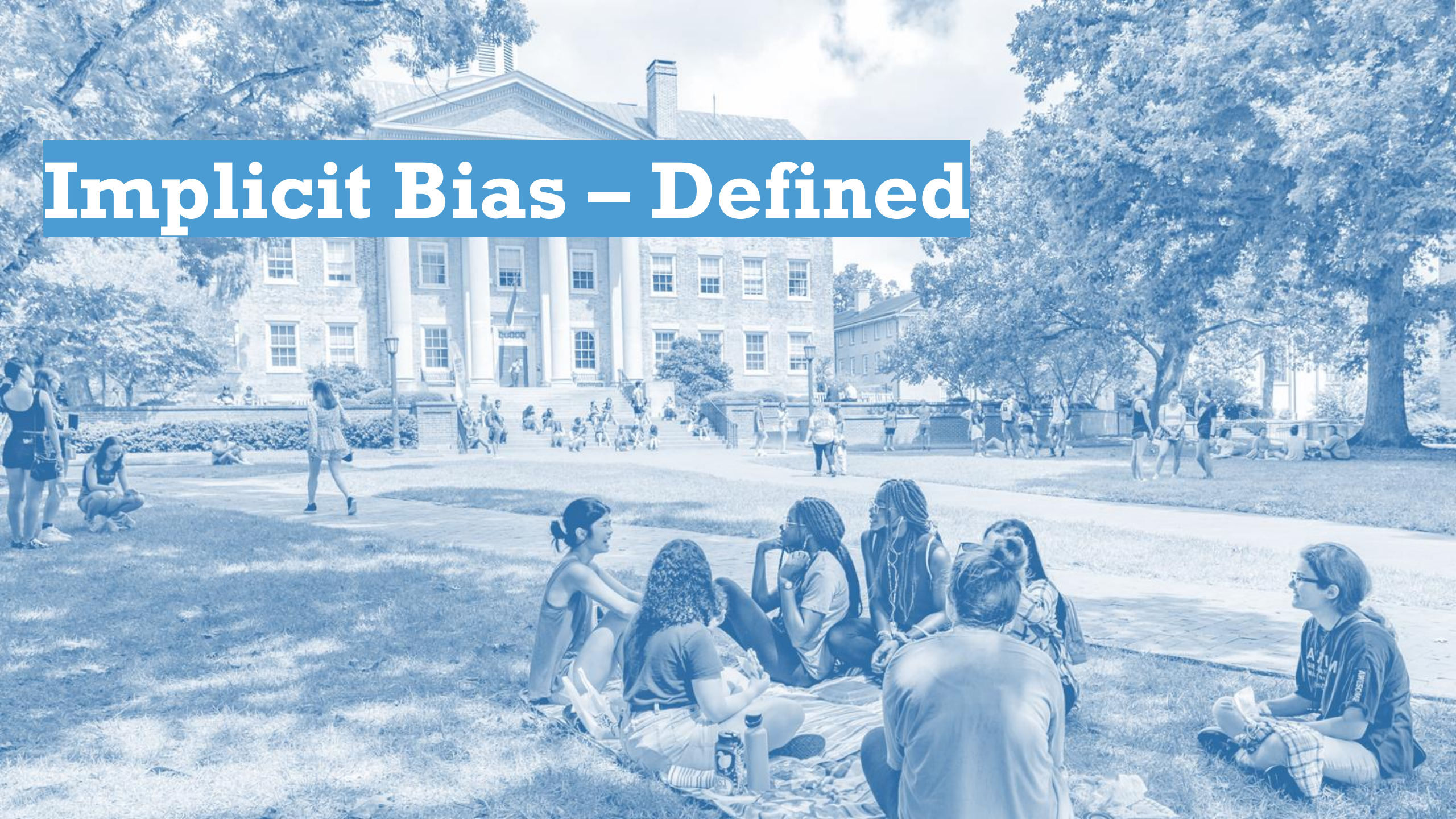
- A greater liking for one alternative over another or others
 - Favor or Reject
 - Nurture or Impede
 - Approach or Avoid

Biases – We All Have Them

Everyone brings with them a diversity of biases



Implicit Bias – Defined



Implicit Bias - Defined

- Can produce judgments
 - Unfavorable (intolerance)
 - Favorable (preference)
- Develops over time
- Can be created by
 - Personal experiences
 - Media representation or misrepresentations
 - Background, culture or upbringing
 - Social experiences
 - Stereotypical associations or prejudices

Types of Implicit Bias

- Affinity/Similarity Bias
 - unconsciously prefer people who share qualities with you or someone you like
- Attribution Bias
 - refers to how you perceive your actions and those of others
- Beauty Bias
 - based on what we believe is their physical attractiveness
- Confirmation Bias
 - search for bits of evidence that back up their opinions

Types of Implicit Bias

- Contrast Effect Bias
 - assess two or more similar things and compare them with one another, rather than looking at each based on their own merits
- Gender Bias
 - preference for one gender over the others
- Halo Effect
 - focus on one particularly “great” trait to make an overall judgement
- Horns Effect
 - focus on one particularly “negative” trait to make an overall judgement





Biases – We All Have Them – So What's the Issue?



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

Potential to Negatively Impact

Credibility

- All parties previous and current conduct
- Evidence presented
- Investigative process and conclusions

Belief/Understanding

- Level/impact of Intoxication
- Level/impact of incapacitation
- Definition of sexual assault
- Overall intent of all parties

Impact

- Responding Party's actions
- Trauma to Reporting Party
- Process on Reporting Party
- Sanctions/corrective action on responding party

Concepts Unwrapped



Strategy to Address Bias

- Increase self-awareness.
- Understand the nature of bias.
- Seek opportunities to discuss biases with others.
- Facilitate unconscious bias literacy training.
- The Implicit Association Test (IAT)

<https://implicit.harvard.edu/implicit/takeatest.html>

Participating as a Panelist in the Hearing (Evaluating Relevancy and Credibility)

Pre-Hearing

After fair and impartial investigations of alleged policy violations under PPDHRM and TIX

- Under PPDHRM Policy- Party may request hearing or accept finding/sanctions
- Under Title IX Policy-case automatically proceeds to a hearing

Pre-Hearing - Continued

- The Hearing Coordinator will send you a Doodle Poll asking your availability to participate in a hearing (typically 3-4 possible dates are included as options).
- If you are selected to participate in the hearing, the Hearing Coordinator will send you an email asking you to hold the selected hearing date.
- After you are selected, the Hearing Coordinator will send you a conflict check email. At this time, you will be notified the names of the parties in the case. If you believe you have a conflict, please notify the Hearing Coordinator immediately.

Pre-Hearing -Continued

- The Hearing Coordinator will issue the parties a Notice of Hearing (NOH). The NOH will include a photo and bio of each panel member assigned to the hearing.
- The parties *MAY* object to a panel member's participation. The Hearing Coordinator will review any objections and make a determination to proceed with the panel as constituted or replace the panel member.
- After your participation is confirmed, you will receive access to the hearing documents: report, appendix, record.

Examples of Evidence

Testimony

Text
Messages

Photograph
s

Social
Media Posts

Receipts

Videos

Phone
Records

Medical
Records

Day of hearing- Questions for Parties/Witnesses

- Have questions prepared in advance for parties/witnesses
 - 1. Decision maker (Hearing Panel) asks questions of the parties and witnesses
 - 2. Attorney/Advisors ask relevant cross-examination questions.

Under PPDHRM, a party may hire legal counsel to participate to the same as extent as the party during the hearing or they may participate in the hearing without representation.

Under Title IX, if a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Attorney/Advocate participation during the hearing

UNC-Chapel Hill's policy allows for an attorney to accompany a party at all levels of the process

- In particular, a student may request that the student's attorney or non-attorney advocate do any or all of the following at a hearing:
- Provide legal advice to the student during the hearing
- Make opening and closing statements
- Submit questions to the Hearing Chair to pose to the other party
- Question the University Investigator and
- Question witnesses, however, the Hearing Chair has the discretion to determine that the questions will be submitted to the Hearing Chair in cases where the Hearing Chair determines that questioning by the parties will be unduly intimidating or burdensome to a witness

Guide for Determining Relevance

What is a relevant question?

- A question is relevant because it asks whether a fact material to the allegation is more or less likely to be true.
- A question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true.

Who makes the decision?

Who decides if questions are relevant ?

- PPDHRM – Hearing Coordinator (Parties submit questions to Hearing Coordinator prior to hearing and a relevancy determination is made by the Hearing Coordinator in advance.)
- Title IX – Hearing Panel (Before a party or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. This happens in real time.)

Relevance- Continued

A question about a Complainant's Prior Sexual Behavior or Sexual Predisposition is relevant because although it calls for prior sexual behavior information about the complainant, it meets one of the two exceptions to the rape shield protections and it tends to prove that a material fact at issue is more or less likely to be true:

- Exception 1: The question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.
- Exception 2: The question concerns specific incidents of the complainant's prior sexual behavior with the respondent and is asked to prove consent.

Credibility

Credible evidence is evidence that's likely to be believed. – Merriam Webster Dictionary

Assessing Credibility

- General demeanor
- Opportunity/capacity to observe event
- Consistency with other evidence (including prior statements)
- Stake in the outcome/motive to lie
- Plausibility/improbability of account
- Effects of trauma



Assessing Credibility

- Consistency in account
- Plausibility of account
- Specificity of details
- Corroborating evidence
 - Eyewitnesses
 - Disclosure witnesses
 - Documentary evidence (text messages, photos, etc)

Credibility Determinations

Credibility Determinations:

- What is reasonable?
- Level of detail?
- Does the timeline match up?
- Corroborating evidence?
- Apply standard of proof: Preponderance of the evidence

Deliberations and Conclusions

Two separate determinations

- First, apply facts to elements of relevant prohibited conduct definitions to determine, by preponderance of the evidence, responsibility
- If “responsible” for policy violation(s), determine appropriate sanctions *using guidelines and other inputs*
- Reach reasonable conclusions based on evidence in the record, and be able to articulate the rationale.

Sanctions

- Check institution-specific guidance, practices, possibilities, ranges, etc.
- Seek guidance as necessary
- Goal is to address behavior and prevent recurrence
- Careful of responsibility/sanction trade off (two separate
- determinations)

Use of Technologies for Hearings

Applications



Important Contact Information

University-wide

Information Technology

- <https://its.unc.edu/>
- <https://help.unc.edu/sp>
- 919-962-HELP

Office 365

- <https://office365.unc.edu/>
- <https://office365.unc.edu/self-guided-learning/>

Zoom

- <https://software.sites.unc.edu/zoom/>
- <https://support.zoom.us/hc/en-us>

OneDrive

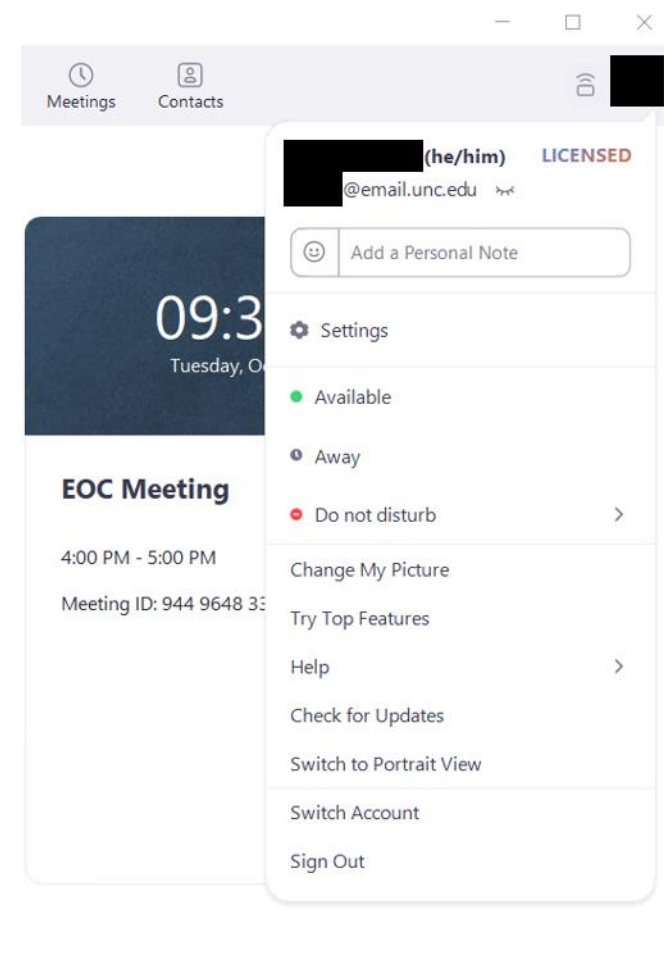
- <https://onedrive.unc.edu>

EOC Contacts

- Hearing Officer
- Program Specialist

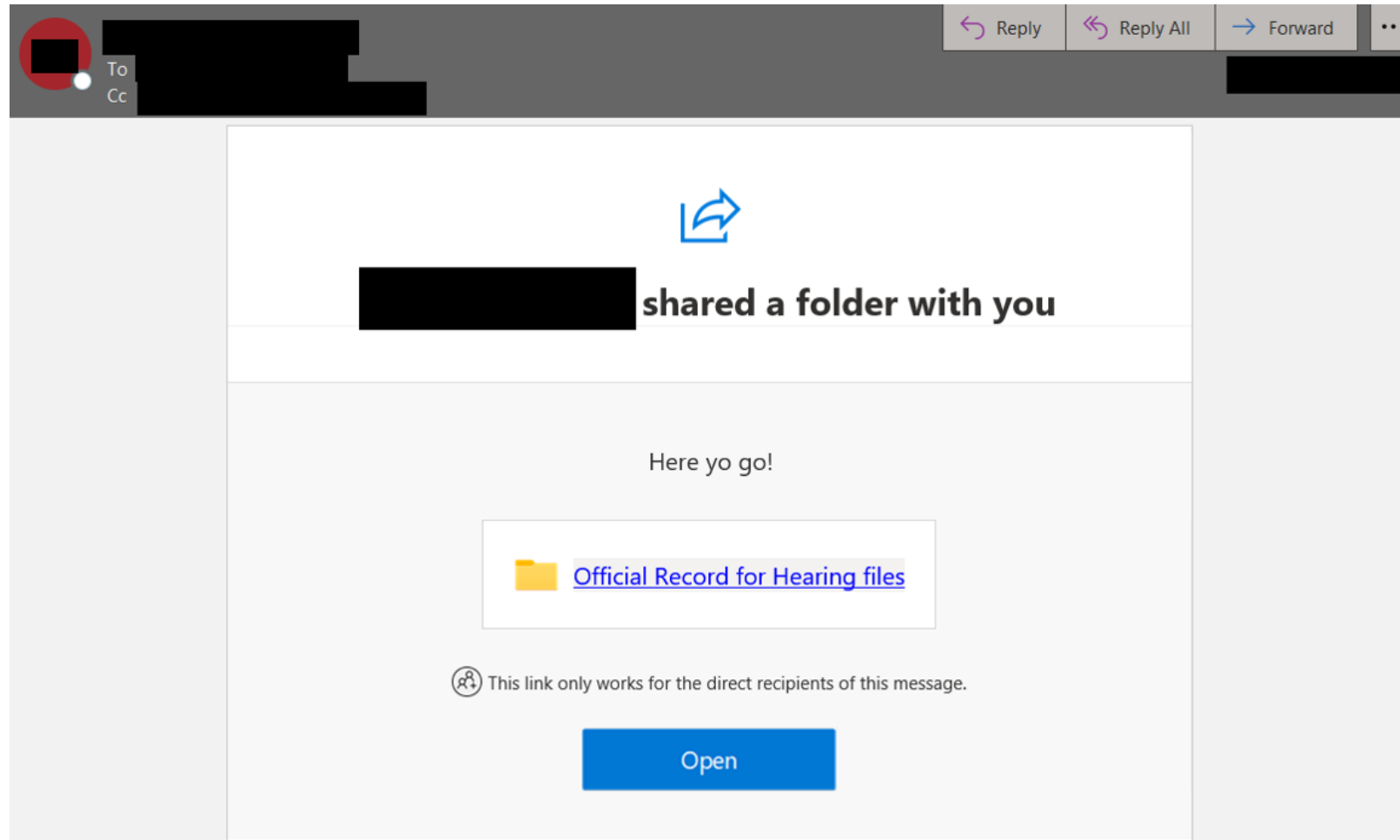
Before the Hearing

- Make sure that Zoom (and your laptop) has installed all updates. ITS sometimes will push through updates that require you to restart your computer.
- If you have a smart mobile device, consider downloading the phone application as a backup should your laptop shut down



Before the Hearing

- Prior to the Hearing, you will get a link sent via email to allow you to access the Hearing Files.
- Make sure that you can access and have familiarized yourself with the Hearing Files on OneDrive
- If you have trouble accessing, please immediately notify the EOC



Before the Hearing

My files

Recent

Shared

Recycle bin

Quick access

SC

Searc Committee - Direct...

Create shared library

+ New

Upload

Sync

Automate

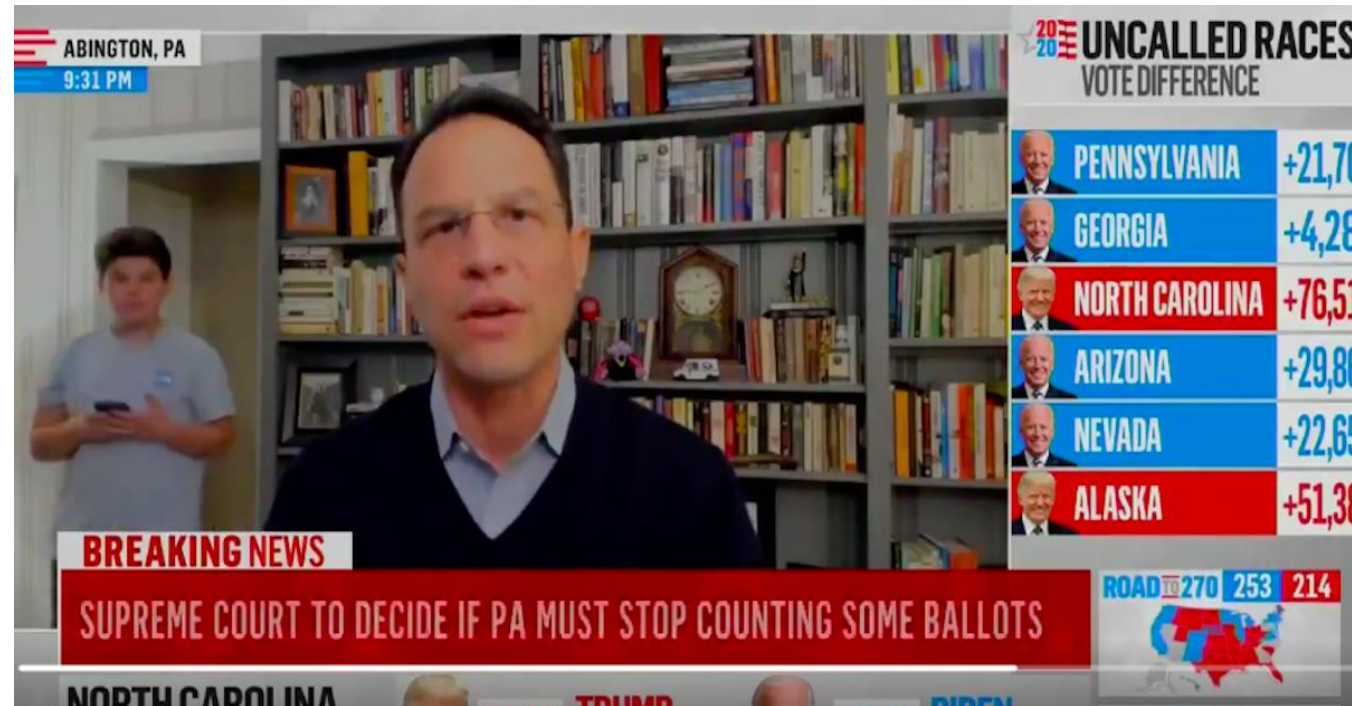
Sort

My files

	Name	Modified	Modified By	File size	Sharing
	Hearing Files for Investigators & P...			1 item	Shared
	Hearing Files for Panel			0 items	Shared
	Hearing Sanctions & Impact State...			2 items	Shared
	Hearing Files for Panel (Sample)	A few seconds ago		0 items	Private

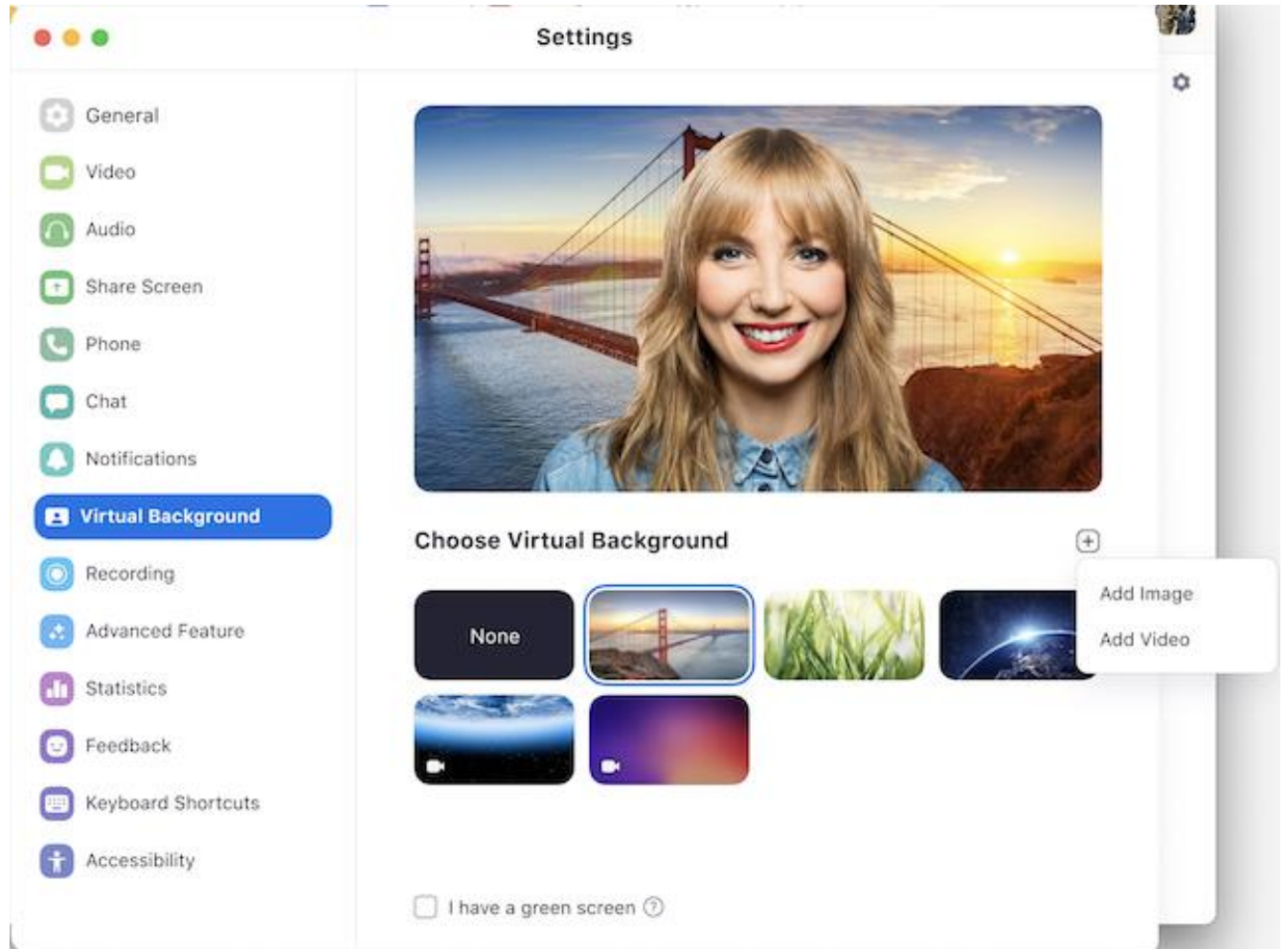
Before the Hearing - Considerations

- **Privacy**: Make sure that you are in a private location with minimal distractions
- **Internet Strength**: You will be using cloud services for both the meeting and to review documents



Before the Hearing – Video Options

Virtual Background: From the Zoom desktop app, click the cog icon in the upper right-hand screen to access settings



Arriving to the Hearing

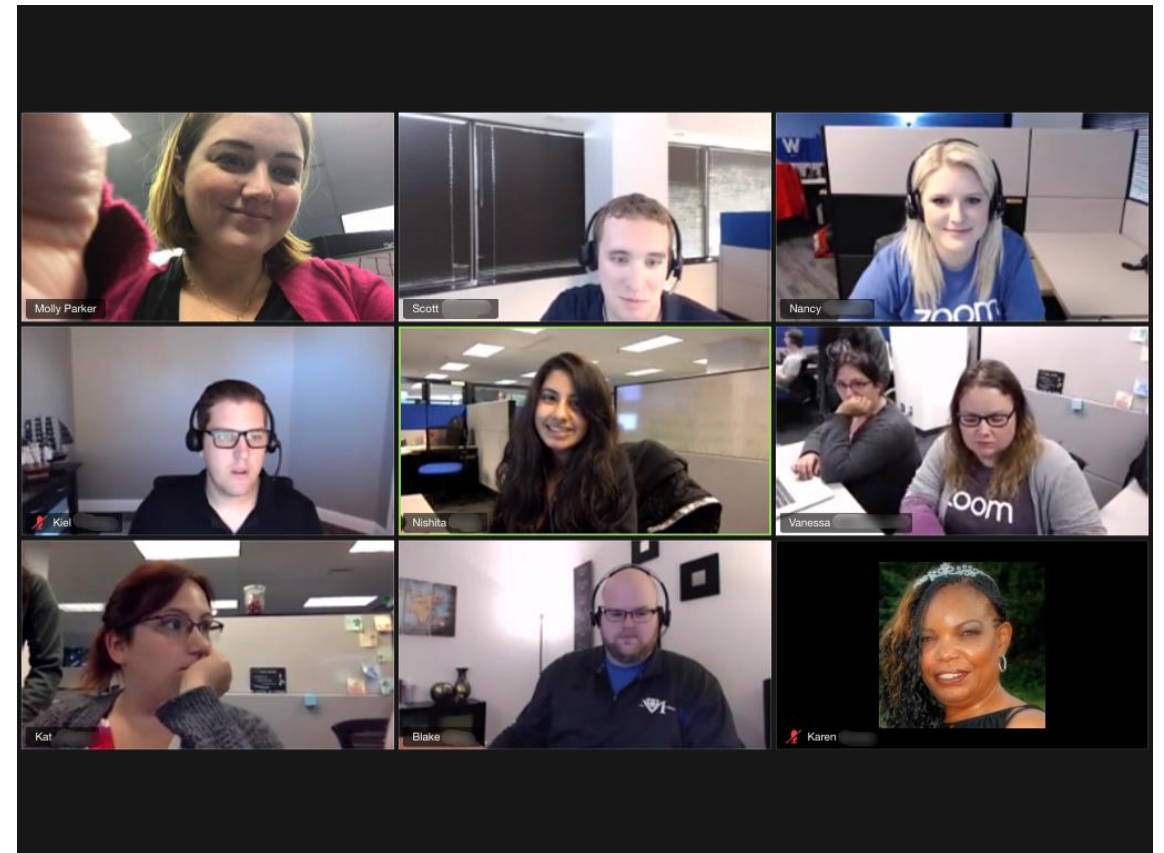
- Consider arriving 5-15 minutes early to the Hearing to make sure that Zoom is functioning, and you are able to adjust volume levels, etc.
- EOC staff will be in Zoom early to greet individuals and assign Breakout Rooms
- You should be placed immediately in a Waiting Room and then brought in by EOC staff.

During the Hearing

- The Hearing will be audio recorded.
- We ask that video stay on the entire time and that people stay muted unless they need to speak.
- The chat function will be restricted to only communicate with the Hearing Officer. The chat WILL also be recorded.
- Note: If you are accidentally placed into a Room with either party by yourself or with their advisors, do not communicate with them, and notify EOC staff immediately.

During the Hearing – Gallery View

- **Gallery View**: Allows you to see thumbnail displays of participants, in a grid pattern.
- When in Gallery view and a participant begins speaking, that active speaker is relocated to the current page you are viewing and highlighted.



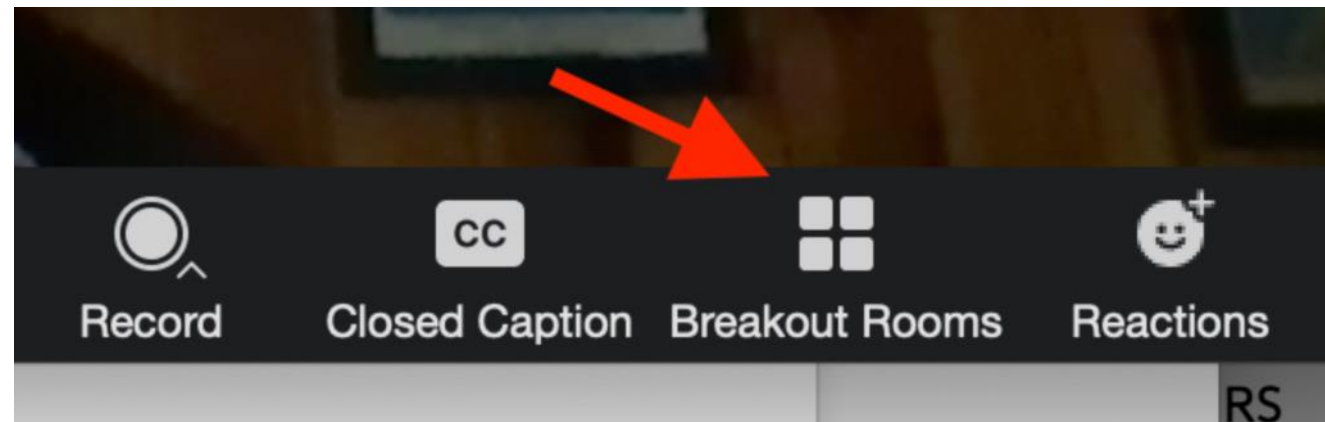
During the Hearing – Speaker View

- Speaker view: will switch the large video window between who is speaking.
- Pinning a participant: will keep them as the largest video for your view of the meeting, while spotlighting will do the same but for everyone in the meeting.

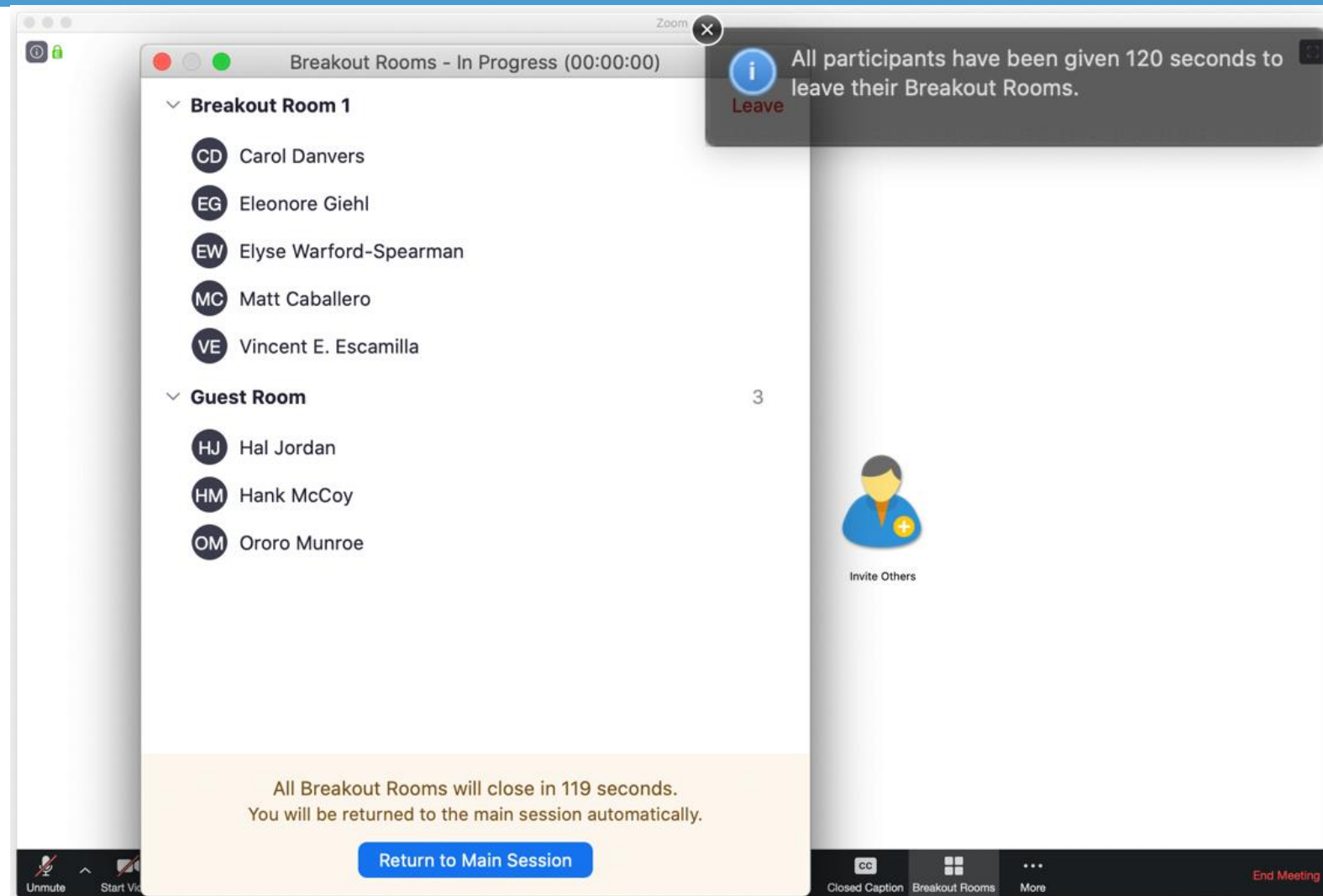
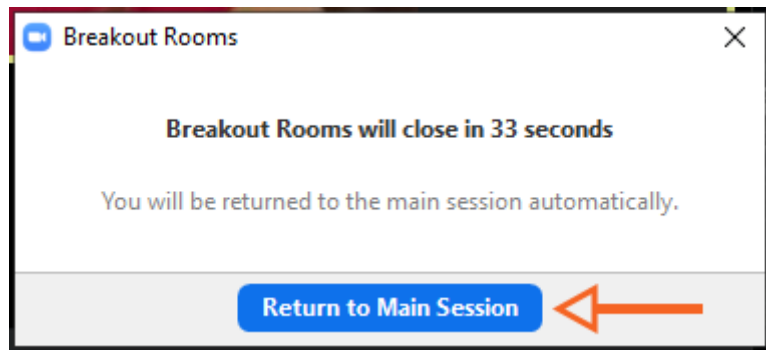


During the Hearing – Breakout Room

- During Breaks, you will be assigned to a breakout room with the other panelists. The OUC representative, the Hearing Officer, or others may be assigned the same breakout room as the panelists.
- You will get automatic notifications to enter and leave the Breakout Room.



During the Hearing – Breakout Room



During the Hearing - Troubleshooting

- If you have any trouble hearing or seeing a party or witness, immediately notify the Hearing Officer. It is important that you are able to consider all information provided at the Hearing.
- Feel free to interject to ask an individual to repeat themselves or speak up.
- If you are disconnected from the Zoom Hearing, please immediately notify EOC staff so that we can pause the proceedings.



Tips for Remote Hearings

Manage digital distractions. Before the Hearing, mute notifications on your phone, Outlook, and in your browser; leave your phone in another room; close any tabs unrelated to the Hearing; and/or use distraction blocking software to temporarily block social media and other tempting websites.

Occupy your hands. If your mind tends to wander during Zoom sessions, occupying your hands can help. Try preparing a tactile activity, such as knitting, or using a sensory object, like a stress ball, to keep your hands busy and your mind focused during the Hearing.

Get some distance. Try to put at least 20 inches between you and your computer.

Use the 20/20/20 method. After 20 minutes of looking at your computer, focus on an object around 20 feet away for 20 seconds.

After the Hearing

- Engage in self-care.
- You will be provided recordings (and transcripts if enough time) of the Hearing to assist in deliberations.
- EOC will revoke access to the Hearing Files after the Notice of Hearing Outcome is sent.
- Preserve all communication (i.e., emails) with individuals about the Hearing.
- Destroy any written or digital notes.

Thank you!

