

NC STATE UNIVERSITY

Office for Equal Opportunity

Administrator's Guide
for Resolving Unlawful
Harassment Claims

NORTH CAROLINA STATE UNIVERSITY

Administrator's Guide for Resolving Unlawful Harassment Claims

North Carolina State University
Office for Equal Opportunity
1 Holladay Hall • Box 7530
Raleigh, NC 27695-7530
Phone 919.515.3148 • 919.515.1234
Fax 919.513.1428 • TTY 919.515.9617
www.ncsu.edu/equal_op/

Table of Contents

Introduction	i
Chancellor’s Statement	i
Section Summary	ii
Terminology	iii
CHAPTER 1	
<hr/>	
Unlawful Harassment Overview	1
Working and Learning Environments	1
Discrimination	2
Unlawful Discrimination	2
Unlawful Harassment	3
Retaliation	4
The “Unwelcome” Standard	4
The “Reasonable” Standard	6
Hostile Environment	6
Quid Pro Quo	7
Protected Classes	8
Race	8
Color	9
Religion	9
Creed	9
Sex	9
National Origin	9
Age	10
Disability	10
Veteran Status	10
Sexual Orientation	10
Unlawful Harassment and Discrimination	10
Race and Color	11
National Origin	11

TABLE OF CONTENTS

Religion	11
Sex	12
Age	13
Disability	13
Sexual Orientation	14
Consequences of Unlawful Harassment and Discrimination	14

CHAPTER 2

Prevention and Resolution of Harassment Claims	17
Roles in Prevention and Intervention	17
Role of All Campus Community Members	17
Role of Supervisors/Administrators	18
Prevention	18
Intervention	19
Role of the Director of Harassment Prevention Programs	19
Prevention	19
Intervention	20
Role Dependent Action	20
If You Feel Harassed ...	20
If You Are Accused of Harassment ...	21
If You Receive A Complaint of Harassment ...	22
Filing a Complaint	22
False Claims	25
Investigation Overview	25
Investigative Process	25
Identify the Issues	25
Sources of Information	25
Investigation Timeline	26
Witness Interviews	26
Evidence Credibility	26
Analysis of Results	27
Final Determination	27
Potential Resolution Sanctions	28
Witness Interviews	29
Context	29
Confidentiality	30
Questioning	30
Discrepancies	30
Rights and Responsibilities	31
Grievant Rights and Responsibilities	31
Respondent Rights and Responsibilities	32
Witness Rights and Responsibilities	33

Resolution Process Overview	34
Process Differences	34
If the Harasser Is a Student ...	35
If the Harasser Is an EPA Employee ...	35
If the Harasser Is a SPA Employee ...	35
Notification of Resolution	36
Grievant Notification	36
Letter to Grievant	37
Respondent Notification	40
Letter to Respondent	40

CHAPTER 3

Legal Issues	45
Federal Legislation	46
The Equal Pay Act of 1963	46
Title VI of the Civil Rights Act of 1964	46
Title VII of the Civil Rights Act of 1964	46
The Age Discrimination in Employment Act of 1967	47
Title IX of the Education Amendments of 1972	47
The Rehabilitation Act of 1973	47
The Americans With Disabilities Act of 1990	48
Individual With a Disability	48
Qualified Individual With a Disability	48
Reasonable Accommodation	48
Undue Hardship	48
Direct Threat	49
Prohibited Inquiries and Examinations	49
Drug and Alcohol Use	49
The Civil Rights Act of 1991	49
First Amendment Issues	49
North Carolina Legislation	52
General Statutes	53
Due Process	54
Retaliation	55
Confidentiality	55

CHAPTER 4

Policies and Regulations	57
Policies, Regulations, and Memoranda	57

TABLE OF CONTENTS

Racial Harassment Policy	60
Sexual Harassment Policy	61
Interpersonal Relationships Among Faculty, Staff, and Students	63
Grievance Procedure for Faculty and EPA Employees	66
Uniform Student Grievance Procedure	83
Equal Opportunity and Non-Discrimination Policy Statement	84
Resolution Procedures for Harassment Complaints	86
Sexual Orientation Policy Statement	91
Unlawful Harassment Policy Statement	93
SPA Grievance and Appeal	95
Affirmative Action Policy Statement	109
Memorandum Regarding University Computers and Pornography	111
Computer Use Policy	115
Computer Use Regulation	117

CHAPTER 5

Resources	123
Internal Resources	123
NC State University Resources	123
Office for Equal Opportunity	123
Human Resources	125
Office of Legal Affairs	125
Administrative Information	126
External Resources	127
Federal Resources	127
U.S. Equal Employment Opportunity Commission	127
U.S. Department of Education: Office for Civil Rights	127
U.S. Department of Justice	128
U.S. Department of Labor	128
State Resources	129
State Board of Education	129
NC General Assembly	129
NC Department of Justice	129
NC Department of Labor	129
NC Office of Administrative Hearings	129
NC Office of State Personnel	130
Other Resources	130
Index	133

Introduction

The **Administrator's Guide for Resolving Unlawful Harassment Complaints** is a handbook for responding to complaints of unlawful harassment. Administrators should carefully review **The Administrator's Guide** and become familiar with its contents. Administrators are encouraged to contact the Director of Harassment Prevention Programs with any questions regarding the information contained in **The Administrator's Guide** or for assistance with issues related to complaints of harassment.

Prevention is the best tool for eliminating unlawful harassment and discrimination. When claims of unlawful harassment and discrimination do occur, strong emphasis is placed on promptly reporting harassment complaints to designated administrators who have the authority to investigate and resolve such complaints. Inquiries and complaints should be directed to the Director of Harassment Prevention Programs (see Chapter 5: Resources for contact information).

Chancellor's Statement

To all members of the NC State Community:

“While acts of discrimination are wrong because they foster intolerance, incivility, and intimidation, they still occur in many segments of our society. It is essential that NC State University demonstrate its intellectual and ethical leadership by reaffirming its strong position against discrimination. I am, therefore, reminding all faculty, staff, and students that this University does not condone and will not tolerate discrimination or harassment of any individual in the University community. As Chancellor, I commit this institution to fulfill both the spirit and the law of equal opportunity ...”

Marye Anne Fox, Chancellor

Section Summary

The **Administrator's Guide** is divided into five sections, which are briefly described below.

Note:

Within each section, a boxed **Note** like this one appears in several instances to indicate further explanation and interpretation of that topic.

Chapter 1: Unlawful Harassment Overview

This section provides an overview of information regarding unlawful workplace harassment, basic terms, protected classes, and potential consequences of harassment.

Chapter 2: Prevention and Resolution of Harassment Claims

The roles of various campus community members, an overview of the investigative and resolution processes, basics on conducting witness interviews and the rights and responsibilities of involved persons are examined in this chapter.

Chapter 3: Legal Issues

The material in this section provides important background information so that administrators may have a fuller understanding of the legal issues involved with claims of harassment and discrimination. Summaries of federal and state legislation are included here.

Chapter 4: Policies and Regulations

Several university policies and regulations related to unlawful harassment and discrimination are included for easy reference.

Chapter 5: Resources

This section contains lists of university contact information and referrals to both internal and external resources.

Terminology

Definitions for common terms used in **The Administrator's Guide** are listed below.

Accused – an individual, as identified by a grievant, as having exhibited harassing behavior. Use of this term does not indicate an assumption of guilt or innocence; it is used merely for generic identification of persons accused of harassing behavior. Although the term *respondent* is the preferred term for this handbook, it is used interchangeably with the term *accused*.

Administrator – indicates the individual designated to resolve a complaint of harassment. Typically, this individual is the dean or unit head of the college of the unit employing the respondent. If it is not clear who should serve as the administrator, then the Director of Harassment Prevention Programs will consult with the Office of Legal Affairs and others to make this determination. Individuals may also consult with Human Resources for situations involving SPA and/or EPA employees

Affected party – see Grievant.

Bona Fide Occupational Qualification (BFOQ) – BFOQs are those skills and abilities necessary for a person to be successful in the position. BFOQs may include qualifications such as well-organized or good public speaking but do not include personal characteristics such as marital or parental status.

Complainant – see Grievant.

Director of Harassment Prevention Programs – the Director of Harassment Prevention Programs works in the Office for Equal Opportunity and reports to the Vice Provost for Equal Opportunity and Equity. The Director assists grievants with finding resolutions to their complaints through both formal and informal means. The Director may offer advice on how to resolve a situation in an informal manner or may be required to formally pursue a complaint through an investigation. If a formal investigation is pursued, the Director provides a report to the unit head or supervisor who will, in turn, make disciplinary decisions after review of the investigation findings.

Exempt from Personnel Act (EPA) – EPA employees are those members of the university whose employment status is exempt from the State Personnel Act.

Equal Employment Opportunity Commission (EEOC) – The EEOC is an independent federal agency originally created by Congress in 1964 to enforce Title VII of the Civil Rights Act of 1964. The Commission is composed of

five Commissioners and a General Counsel appointed by the President and confirmed by the Senate. Originally vested with limited investigational powers, the EEOC was given expanded authority in 1972 pursuant to the Equal Employment Opportunity Act and now enforces federal statutes related to employment discrimination. This authority includes the right to settle complaints between the grievant and the employer and to sue the employer on behalf of the complainant. In the case of an employer that is a state institution, the EEOC may refer the case to the U.S. Attorney General for possible legal action.

Fair Employment Practices Agency (FEPA) – the EEOC may defer investigation of civil rights claims to certain state and local agencies in order to avoid duplication of effort. The Office of Administrative Hearings (OAH) is a designated FEPA in North Carolina.

Grievant – a person making an inquiry or complaint regarding harassment related to race, color, religion, creed, sex, national origin, age, disability, veteran status, and/or sexual orientation. Use of this term does not indicate the assumption of belief or disbelief of the individual's complaint; it is used merely for generic identification of persons bringing forth questions or complaints of harassing behavior. While this is the preferred term for this handbook, it is used interchangeably with the terms *complainant* and *affected party*.

Harassment Resolution Officer (HRO) – a Harassment Resolution Officer facilitates the resolution of a harassment inquiry or complaint. HROs provide information and assistance to those seeking to resolve complaints of harassment based on membership in a protected class at the university. [http://www.ncsu.edu/equal_op/harassment/HRO.html]

Human Resources – the department of Human Resources serves as a resource point for both EPA and SPA employees regarding employee services, benefits, and processes. [<http://www2.acs.ncsu.edu/hr/employee.html>]

Office of Administrative Hearings (OAH) – the Office of Administrative Hearings is part of the NC Office of State Personnel (OSP) that adjudicates violations of state personnel policy and serves as an appeal route for SPA employees. The OAH is also a designated deferral agency for the EEOC (see additional information under *FEPA – Fair Employment Practices Agencies*).

Office for Civil Rights (OCR) – the Office for Civil Rights is part of the U.S. Department of Education. This federal agency ensures equal access to education and enforces federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education, particularly those institutions subject to the

provisions of Title IX of the Education Amendments of 1972. To some extent, the OCR operates under EEOC guidelines because it has not handled the volume of complaints that the EEOC has and, thus, has not developed its own policies and procedures to the same extent as the EEOC. Accordingly, the OCR often defers to the EEOC on many points regarding statements, interpretations, and policies.

Office for Equal Opportunity (OEO) – This is a NC State University department housed in the Provost’s office and serves as a campus wide resource for harassment and discrimination information.

Office of Legal Affairs (OLA) – The Office of Legal Affairs represents NC State University’s legal interests.

Office of State Personnel (OSP) – The OSP facilitates personnel management systems in North Carolina state government agencies, universities, and institutions.

Protected Class – a group of people who share common characteristics and are protected from discrimination and harassment by federal and/or state laws and/or university policy. Covered classes at NC State University include: race, color, religion, creed, sex, national origin, age, disability, veteran status, and sexual orientation.

Respondent – an individual, as identified by a grievant, as having exhibited harassing behavior. Use of this term does not indicate an assumption of guilt or innocence; it is used merely for generic identification of persons accused of harassing behavior. While this is the preferred term for this handbook, it is used interchangeably with the term *accused*.

State Personnel Act (SPA) – SPA employees are those members of the university whose employment status is subject to the State Personnel Act.

Victim – the grievant of a harassment complaint that has been substantiated by an investigation.

INTRODUCTION

Unlawful Harassment Overview

A brief illustration of definitions, examples, and consequences of unlawful harassment provides a basic foundation for understanding what makes certain forms of harassment unlawful.

The information in this section has been compiled from a variety of sources and it is not intended to be exhaustive. Federal and North Carolina laws as well as university policies inform the basis of actions and behaviors constituting discrimination and harassment. Unlawful discrimination and harassment prohibits not only intentional discrimination, but also neutral job or academic policies that disproportionately exclude minorities and other members of a protected class that are not job related.

Working and Learning Environments

It is important to recognize the two different environments in which discrimination and harassment may occur at NC State University: the employment setting and the academic setting. There are federal and state laws as well as university policies that govern the rights and responsibilities of both populations (employees and students) with respect to discrimination and harassment.

Some members of NC State University's campus community engage in both the working and learning environments. An excellent example of this is a graduate teaching assistant, who is primarily a student (and thus engaged in the academic setting) but also is employed by the university (and therefore engaged in the employment setting). For many graduate teaching assistants, the line between "working" and "learning" is often blurred. Another example would be employees of the university who take advantage of the Tuition Assistance Program. These individuals also share the dual roles of employees and students and are therefore engaged in both the employment and academic settings.

One goal of NC State University policies is to hold everyone – faculty, staff and students – accountable to a standard of conduct that prohibits discrimination and harassment in both the working and learning environments. Another goal of the university's procedures is to provide a consistent and equitable response to all concerns of discrimination whether they originate from staff, faculty, or students. The challenge is to provide a model for resolution that balances sensitivity and compassion with neutrality and fairness.

Note:

The working environment includes but is not limited to the physical work site, restrooms, cafeterias, training sessions, business travel, conferences, and work-related social gatherings even if they occur off campus.

Similarly, the academic environment includes not only classrooms but also labs, lecture halls, residence halls, and even academic conferences and athletic events that occur off campus.

Discrimination

There are three generally acknowledged forms of discrimination: (1) **unlawful discrimination**, (2) **harassment**, and (3) **retaliation**. "Discrimination" in general has been traditionally defined as adverse treatment based on an individual's race, color, national origin, sex, or religion. These characteristics are sometimes called "protected classes" or "covered categories." Over the years, federal and state laws have designated other protected classes, such as age, veteran status, and disability. While sexual orientation is not considered a protected class as defined by federal or state law, it is the internal policy of NC State University that sexual orientation should not be a factor upon which employment or academic decisions are based. There are exceptions with respect to the university's relationships with outside organizations (such as the military).

Unlawful Discrimination

In the **employment** arena, unlawful discrimination occurs when an employer's actions in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment unlawfully discriminates against any individual because that individual is a member of a protected class.

Note:

Federal law does allow employers to use sex, religion, or national origin to exclude individuals from certain jobs if there are **bona fide occupational qualifications** (BFOQs) in place for that job. For example, a private religion-based university expects its counselors to use its doctrine in counseling students. However, the university could not refuse to hire a janitor because of his or her religion, as it would not be “reasonably necessary” to the operation of the business.

In the **academic** arena, unlawful discrimination occurs when the university deprives an individual or otherwise discriminates against any individual, with respect to his or her terms, conditions, or privileges of education, because that individual is a member of a protected class.

Note:

Federal law does allow colleges and universities to consider some of the covered categories in making admissions, financial aid decisions, and a few other areas. (For example, certain physical education classes and bathrooms may be segregated by sex.)

Unlawful Harassment

Unlawful Harassment, in either the employment or the academic arena, occurs when an employee or a student who is a member of a protected class, is subjected to unwelcome conduct:

- a. that constitutes an intimidating, hostile, or offensive working and/or academic environment which unreasonably interferes with the individual's work and/or academic performance; or
- b. for which submission to or rejection of a behavior becomes a condition or factor of the individual's employment or education , a situation also known as *quid pro quo*.

Harassment may consist of slurs, "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's protected class status.

Retaliation

Retaliation, in either the employment or the academic arena, occurs when a student or employee is subjected to adverse treatment in response to that individual expressing concern about discrimination or participating in the opposition or resolution of a concern regarding discrimination and/or harassment. According to the EEOC, there are three essential elements of a retaliation claim:

1. protected activity – opposition to discrimination or participation in the complaint process;
2. adverse action; and
3. causal connection between the protected activity and the adverse action.

Although trivial annoyances are not actionable, more significant retaliatory treatment that is reasonably likely to deter protected activity is unlawful. There is no requirement that the adverse action materially affect the terms, conditions, or privileges of employment (*Equal Employment Opportunity Commission*).

Adverse action may include refusal to hire, denial of promotion or benefits, demotion, suspension, discharge or limiting access to. Other types of adverse actions may include but are not limited to threats, reprimands, negative evaluations, or harassment.

Note:

A person who alleges retaliation for protesting discrimination against persons in a protected class need not be in the protected class in order to bring a retaliation claim.

The “Unwelcome” Standard

The distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected conduct may well be difficult to discern. But this distinction is essential because conduct becomes unlawful only when it is unwelcome. Generally, unwelcome conduct means the receiver of such conduct did not solicit or incite the conduct and regards the conduct as undesirable. When confronted with conflicting evidence as to welcomeness, the EEOC looks "at the record as a whole and at the totality of circumstances . . ." (29 C.F.R. § 1604.11(b)),

evaluating each situation on a case-by-case basis. Unwelcome therefore, means conduct that was not wanted or willingly permitted.

There are several factors that should be evaluated when assessing the grievant's response to the alleged conduct as welcome or unwelcome. When welcomeness is at issue, the investigation should determine whether the grievant's own conduct is consistent or inconsistent with his/her assertion that the behavior is unwelcome.

Invited Behavior: Is there any evidence the grievant invited or solicited the conduct?

Similar Conduct: Did the grievant ever engage in conduct of a similar nature with the respondent or others? If so, how recently did this conduct occur? How similar was the conduct?

Note:

The grievant's use of such language or behavior does not necessarily mean the grievant welcomed the conduct of the accused, but it may be relevant in deciding that issue.

Prior Relationship: Was there a prior consensual relationship between the complainant and the accused at any time? If so, what, if anything, did the complainant do to indicate a desire to end that relationship prior to the alleged unwelcome conduct?

Registering Complaint: Did the grievant communicate to the respondent that their conduct was unwelcome at the time that it occurred? Did the grievant complain to others that the conduct was unwelcome at the time this behavior occurred? Did the grievant make use of existing workplace protections and channels for registering complaints?

Note:

The absence of complaints at the time may be relevant but is not conclusive evidence that the conduct was welcome. Consider all reasons given by the grievant for not registering any complaints at the time of the alleged conduct. There are several common reasons why many victims of harassment remain silent – for example, embarrassment, fear of reprisal, and a desire to get along.

Evidence concerning a grievant's general character and past behavior toward others has limited, if any, probative value and does not substitute for a careful examination of a grievant's behavior toward the alleged harasser.

The "Reasonable" Standard

In determining whether harassment is sufficiently severe or pervasive to rise to the level of unlawful harassment, the alleged harasser's conduct should be evaluated from the objective standpoint of a "reasonable person." Consideration should be given to the context in which the alleged harassment took place. When applying this standard, one should adopt the perspective of a reasonable person's reaction to a similar environment under similar or like circumstances.

When defining hostile environment harassment, the "reasonable person", or "reasonable victim" standards govern. Thus, if the challenged conduct would not substantially affect the work environment of a reasonable person, no violation should be found.

Hostile Environment

A *hostile environment* claim generally requires a showing of offensive conduct that is severe and pervasive. A single, unusually severe incident of harassment, however, may be sufficient to constitute a Title VII violation; the more severe the harassment, the less need to show a repetitive series of incidents. This is particularly true when the harassment is physical. More so than in the case of verbal remarks, a single unwelcome physical advance may create an intimidating or hostile environment.

When the victim is the target of both verbal and non-intimate physical conduct, the hostility of the environment is exacerbated and a violation is more likely to be found. Similarly, incidents of harassment directed at other employees in addition to the charging party are relevant to a showing of a hostile environment.

Claims of hostile environment harassment are often coupled with claims of constructive discharge. The EEOC and a majority of courts take the position that an employer is liable for constructive discharge when it imposes intolerable working conditions in violation of Title VII when those conditions foreseeably would compel a reasonable employee to quit, whether or not the employer specifically intended to force the victim's resignation.

Note:

While an employee's failure to utilize effective grievance procedures will not shield an employer from liability for *quid pro quo* harassment, such failure may defeat a claim of constructive discharge.

The following factors are used to determine whether an environment is hostile:

- whether the conduct was verbal or physical or both
- how frequently the conduct was repeated and at what intervals
- whether the conduct was hostile or patently offensive
- the status of the alleged harasser (co-worker, supervisor, third-party)
- whether other employees, supervisors, or third-parties joined in perpetrating the harassment
- whether the harassment was directed at more than one individual

No one factor controls the determination of a hostile environment; rather, an assessment is made based on the totality of the circumstances and the supporting evidence.

Note:

Nothing tangible about a person's job needs to be affected nor is severe psychological harm necessary to establish a hostile environment. The key factors are frequency, severity, and the reasonable person standard.

Quid Pro Quo

In contrast, in *quid pro quo* cases a single incident may constitute harassment if it is linked to the granting or denial of employment benefits. Only a supervisor, manager, or some other person in a position superior to the grievant's may be charged with *quid pro quo* harassment because these are the only levels that could materially affect an employee's working or learning conditions or benefits.

Quid pro quo harassment occurs when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual. This form of harassment most often involves some form of

sexual harassment. The demand for sexual favors may be either explicit or implicit; however, the job benefits at issue must be tangible (such as promotion, assignments, leave, job retention, etc.).

Note:

Although *quid pro quo* and *hostile environment* harassment are theoretically distinct claims, the line between the two is not always clear and the two forms of harassment often occur together. For example, an employee's tangible job conditions are affected when a hostile work environment results in constructive discharge. Hostile environment harassment may acquire characteristics of *quid pro quo* harassment if the offending supervisor abuses their authority over employment decisions to force the victim to endure or participate in unwelcome sexual conduct.

Protected Classes

A protected class is a group of people who share common characteristics and are protected by law from discrimination and harassment. Most people belong to more than one of the various protected classes. For example, each person is a member of the protected class of "sex" and is either male or female. The same can be said of race, color, and other protected classes. Fewer people, however, meet the criteria for membership in the protected classes of disability or veteran status.

NC State University does not have its own definitions of the various protected classes, but rather refers to existing state and/or federal definitions as needed. The definition of *sexual orientation* is an exception because this class is protected by university policy, not state or federal law. The following definitions are used at NC State University for each of the protected classes:

Race

A local geographic or global human population distinguished as a more or less distinct group by genetically transmitted physical characteristics; any group of people united or classified together on the basis of a common history, nationality, or geographical distribution; mankind as a whole (*North Carolina Office of State Personnel*); an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features even though not all members of the race share the same characteristic (*Equal Employment Opportunity Commission*).

Color

The complexion of a person's skin (*North Carolina Office of State Personnel*).

Religion

The expression of one's belief in and/or reverence for a supernatural power recognized as the Creator and/or governor of the universe; or lack thereof (*North Carolina Office of State Personnel*). In most cases, whether a practice or belief is actually religious is not at issue. In those cases, however, in which the issue does exist, the EEOC will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views (*Equal Employment Opportunity Commission*).

Creed

Any statement or system of beliefs, principles, or opinions (*North Carolina Office of State Personnel*). The word creed has been defined as "confession or articles of faith," "formal declaration of religious belief," "any formula or confession of religious faith," and "a system of religious belief" (*Black's Law Dictionary*).

Note:

North Carolina state law covers the protected class of creed.

Sex

The condition or character of being male or female; the physiological, functional and psychological differences that distinguish the male and female (*North Carolina Office of State Personnel*).

National Origin

Relates to a person's (or his or her ancestors) birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group (*Equal Employment Opportunity Commission*).

Age

Equal employment opportunity as to age applies only to persons who are age 40 or over and pertains to both employees and job applicants (*Federal Age Discrimination in Employment Act of 1967*).

Disability

With respect to an individual, (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment (*Equal Employment Opportunity Commission*).

Veteran Status

Vietnam era veterans, special disabled veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, and were discharged or released with other than a dishonorable discharge (*U.S. Department of Labor*).

Sexual Orientation

The direction of one's sexual interest toward members of the same, opposite, or both sexes (*The American Heritage Dictionary® of the English Language, Third Edition*).

Note:

The protected class of sexual orientation is covered by NC State University policy, not state or federal law.

Unlawful Harassment and Discrimination

Unwelcome or unsolicited speech or conduct based upon any of the above-listed protected classes that creates a hostile environment or circumstances involving quid pro quo, is deemed unlawful harassment and is a policy violation at NC State University. The following sections examine some of the more common claims of harassment and discrimination.

Note:

In all cases, it is also unlawful to discriminate and/or harass a person because of their association with another individual based on that individual's status in a protected class (*i.e.* a person's spouse, partner, children, friends, etc.).

Race and Color

Race discrimination includes harassment or discrimination on the basis of physical characteristics associated with a particular race, even where the grievant and the alleged discriminator are members of the same race. Discrimination on the basis of the shade of a person's skin is also unlawful. It is worth noting definitions of the term race are imprecise and the notion of race itself is generally considered to be a social construct although elements of physical appearance are often involved.

National Origin

National origin discrimination includes harassment and discrimination based on place of origin or on the physical, cultural, or linguistic characteristics of a national origin group. Sometimes national origin discrimination overlaps with race discrimination and, in such cases, the basis of discrimination can be categorized as both race and national origin. National origin discrimination extends to a person's accent, manner of speaking, or language fluency, and a person's citizenship status. Practices that deny equal opportunities to those who speak with an accent or have a particular manner of speaking are discriminatory and unlawful. The Immigration Reform and Control Act of 1986 (IRCA) requires employers to prove all employees hired after November 6, 1986 are legally authorized to work in the United States. Giving preference to U.S. citizens in hiring or employment opportunities may violate IRCA unless there are legal or contractual requirements for particular jobs. Discrimination also includes an employer's perception that an individual is a member of a particular national origin group regardless of how the individual identifies or if the individual is in fact a member of a particular national origin group.

Religion

Similar to the EEOC and the NC Office of State Personnel, NC State University defines "religion" to include moral or ethical beliefs as to right and wrong that are sincerely held with the strength of traditional religious convictions. This also prohibits discrimination against someone because s/he

is an atheist. Employers are expected to reasonably accommodate the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer. Employers may not discriminate on the basis of an employee's or prospective employee's availability, religious dress, or Sabbath or religious holiday observances unless there is a legitimate work-related need that cannot otherwise be met without undue hardship.

Sex

Sex discrimination includes both *sexual harassment*, where the prohibited conduct is sexual in nature, and sex-based harassment that is not of a sexual nature, sometimes called *gender-based harassment*.

Sexual harassment may occur with individuals of the same or opposite sex. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors, or any other physical or verbal conduct of a sexual nature when:

1. submission to the conduct is made either a term or condition of employment or submission or rejection of such conduct is used as a basis for employment or academic decisions (also known as *quid pro quo*);
2. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Sexual Assault is forcible or violent sex-linked behavior that may or may not include rape.

Sexual Bribery is the solicitation of sexual activity or other sex-linked behavior by promise of reward.

Sexual Coercion is the solicitation of sexual activity or other sex-linked behavior by threat of punishment.

Gender harassment includes generalized sexist statements or behavior that convey insulting, degrading, or sexist attitudes. Gender harassment may create an intimidating, hostile, or offensive work environment and is therefore, unlawful.

With regard to **pregnancy**, childbirth, and related medical conditions, an employer must provide leave and benefits for women affected by pregnancy and childbirth on the same terms as it does for other individuals similarly unable to work. Pregnant employees must be permitted to work as long as they are able to perform their jobs. If a pregnant employee requires a leave of

absence, employers must treat pregnancy-related absences the same as absences by employees who have other temporary disabilities.

Age

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age and applies to both employees and applicants. As a narrow exception to that general rule, a job notice or advertisement may specify an age limit in the rare circumstances where age is shown to be a *bona fide occupational qualification* (BFOQ).

The ADEA was amended in 1990 to include the Older Workers' Benefit Protection Act that states that it is unlawful for an employer to deny benefits to an older worker.

Disability

The term disability has specific meaning for federal EEOC laws, regulations and policies that may differ from the definition of "disability" in other laws drafted for other purposes. For the purposes of preventing discrimination, disability is defined as:

1. a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
2. a record of such an impairment; or
3. being regarded as having such impairment.

A person must meet the requirements of at least one of these three criteria to be considered a member of the protected disability class.

Note:

The definition of an individual with a disability precludes discrimination against persons who are treated as if they have a substantially limiting impairment, even if in fact they have no such current incapacity.

An employer or educational facility is required to make a **reasonable accommodation** to the known disability of a qualified student, applicant, or employee if such accommodation would not (1) impose an undue hardship, or (2) would not constitute a direct threat to the operation of the institution.

Undue hardship is defined as “an action requiring significant difficulty or expense when considered in light of factors such as an organization’s size, financial resources and the nature and structure of its operation” (*EEOC*).

A **direct threat** is defined as “significant risk of substantial harm to the health or safety of the individual or of others, if that risk cannot be lowered to an acceptable level by reasonable accommodation” (*EEOC*). Employers are required to base direct threat assessments on reliable medical or other objective evidence, not stereotypes, ignorance, or fear.

An employer or educational facility is not required to lower quality or production standards or academic standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

Sexual Orientation

Educational and employment decisions should be based on an individual's abilities and qualifications and should not be based on factors or personal characteristics that are not germane to academic abilities or job performance. An individual's sexual orientation is a factor which is not relevant to educational and employment decisions. Sexual orientation discrimination is prohibited by NC State University policy and not federal or state law. This internal policy does not apply to the University's relationships with outside organizations including the federal government, the military, ROTC, and private employers.

Consequences of Unlawful Harassment and Discrimination

The effects of harassment and discrimination on a victim may manifest themselves in a variety of ways depending on the type of harassing behavior, the academic or professional setting, and the demeanor of the victim.

▪ Academic

lower attendance	loss of academic self-confidence
incomplete work	withdrawal from class
substandard work	withdrawal from academic program
late assignments	withdrawal from university
substandard grades	withdrawal from higher education

▪ **Professional**

lower attendance	change of job within department
incomplete work	change of job within university
substandard work performance	change of profession
withdrawal from colleagues	withdrawal from professional world
loss of professional self-confidence	

▪ **Physical and Emotional**

general depression	sense of isolation from peers
changes in eating patterns	irritability with family and friends
changes in sleeping patterns	fear and anxiety
body aches and pains	alcohol and drug use
sense of powerlessness and vulnerability	

Note:

There may be **institutional consequences**, such as unfavorable publicity, enrollment and recruitment difficulties, loss of financial support, lowered productivity, and morale problems.

Prevention and Resolution of Harassment Claims

This chapter provides an examination of the particular roles of various campus community members in prevention of unlawful harassment and appropriate intervention measures. These roles are related to both the investigation and resolution of harassment claims. A guide to these processes is included in this section.

It is the responsibility of all employees and students, regardless of status, to create and maintain a supportive and harassment-free working and learning environment for all members of the campus community. Each member of the campus community is responsible for understanding and complying with discrimination and harassment policies and regulations as well as knowing where to obtain assistance for resolving concerns. Some campus members have additional responsibilities in accordance with their professional roles. **Supervisors, administrators, deans, unit heads, and harassment resolution officers have a higher level of responsibility because part of their duty involves responding promptly and appropriately to harassment and discrimination claims.**

Roles in Prevention and Intervention

Role of All Campus Community Members

The first step in prevention of harassment and discrimination is to examine your own actions and behaviors. The following list of suggestions is by no means exhaustive and each person is encouraged to seek other ways of creating a working and learning environment free of harassment and discrimination.

- Role model appropriate behavior for others.
- Make an effort to know those around you.
- Use appropriate language and behavior.
- Each person has “personal space” – watch for signs that tell you when you may be infringing on that space.
- Keep compliments casual and impersonal.
- Avoid jokes, words, phrases, and gestures with racial, sexual, and religious connotations.
- Avoid making assumptions and comments about an individual’s race, religion, gender, sexual orientation, and ability.
- Accept the uniqueness of others.
- Understand your own biases, beliefs and behaviors.
- Respond to concerns when they arise.

If you are uncertain about how others may be interpreting your behavior, check with a peer, colleague, or a supervisor. All members of the campus community are encouraged to contact the Office for Equal Opportunity with any questions regarding harassment and discrimination.

Role of Supervisors/Administrators

Deans, unit heads, administrators and others in a supervisory position have specific roles in the prevention and resolution of harassment and discrimination claims.

Prevention

- Ensure that a harassment free environment exists for faculty, staff and students by supporting training and education efforts and by serving as a role model.
- Provide training and education, with the assistance of the Office for Equal Opportunity, to all faculty, staff, and students.
- Develop and disseminate educational materials to the university community.
- Serve as a resource to university members and committees regarding harassment, discrimination, and related issues.

Intervention

- Refer individuals with inquiries, questions, and complaints to the Director of Harassment Prevention Programs. SPA and EPA employees may consult with Human Resources.
- It is an acceptable and encouraged practice for a supervisor/administrator to listen to and talk with an individual who brings forward a question or complaint. However, the supervisor/administrator should NOT make any statements of judgment regarding the credibility of the complaint or any statements of promise regarding the resolution of the complaint.
- A supervisor/administrator should involve the OEO Director of Harassment Prevention Programs or a Human Resources representative as quickly as possible. Even if the supervisor/administrator continues his/her involvement, it is imperative that the OEO Director or Human Resources representative be included to ensure appropriate investigation and verification of any violations of federal and/or state law or university policy.
- The supervisor/administrator and the OEO Director or Human Resources Representative may jointly conduct the investigation of any complaints. The supervisor/ administrator and the OEO Director should negotiate their appropriate levels of involvement.
- If the supervisor/administrator assists with the investigation, he or she is responsible for maintaining clear documentation of interviews, conversations, and meetings regarding the intervention and investigation of a complaint with which they are involved.

Role of the Director of Harassment Prevention Programs

The Director of Harassment Prevention Programs is located in the Office for Equal Opportunity (OEO) and has a specific role in the prevention and resolution of harassment and discrimination.

Prevention

- Provide training and education to all faculty, staff, and students.
- Develop and disseminate educational materials to the university community.
- Serve as a resource to university members and committees regarding harassment, discrimination, and related issues.

Intervention

- Develop procedures for reporting of inquiries and complaints.
- Develop procedures for resolution of complaints.
- Coordinate all efforts in responding to inquiries and complaints of harassment.
- Maintain complete records of inquiries and complaints.
- Gather and analyze data in order to maximize and improve prevention and intervention services.
- Seek continual feedback and evaluation of services, training, policies, and procedures.
- If a complaint has been received, there are additional roles for the OEO Director of Harassment Prevention Programs.

Intake: hear questions and complaints regarding harassment and provide in-depth information to individuals.

Consultation: provide information and assistance to grievants who wish to confront problematic situations alone.

Mediation: provide mediation between grievants and respondents who are willing to participate in mediation.

Investigation: involves (1) *Documentation* – maintain clear documentation of interviews, conversations, and meetings regarding the resolution of a complaint. (2) *Fact Finding* – manages the logistical tasks, witness interviews, and other appropriate actions for conducting a thorough investigation. (3) *Consultation* – provide assistance, expertise, and information regarding findings, resolution, and notification of parties.

Role Dependent Action

Each person involved in harassment or discrimination claims has specific actions they may take on their own before seeking assistance from a peer, supervisor, the Office for Equal Opportunity, or Human Resources.

If You Feel Harassed ...

1. Review your responsibilities as a member of the NC State community.
2. Read the policies and regulations regarding harassment and discrimination.

3. Let the other party know that the behavior is offensive and unacceptable. Ignoring the behavior will often be taken as tacit consent. Say no. Make it clear.
4. Keep a record of dates, places, times, and witnesses of harassing behavior.
5. Seek advice and be informed about the options available. If you are a student, consult with an advisor or the Office for Student Conduct; if you are an employee consult with a supervisor, and if you are an EPA or an SPA employee you may also consult with a representative of Human Resources. All campus members are encouraged to call the Office for Equal Opportunity for advice and assistance.

If You Are Accused of Harassment ...

1. Stop the behavior immediately.
2. Know that being defensive may only make the situation worse. While you have every right to defend your actions, a calm and non-judgmental approach is more appropriate.
3. Listen very carefully to the other party and try to understand that person's perspective. It is not uncommon for our behaviors to have an impact very different from what we intended.
4. Review your responsibilities as a member of the NC State community.
5. Know your rights – read the policies and regulations regarding harassment and discrimination.
6. Avoid any appearance of retaliation, whether direct or indirect.
7. Seek advice and be informed about the options available. If you are a student, consult with an advisor or the Office for Student Conduct; if you are an employee consult with a supervisor, and if you are an EPA or an SPA employee you may also consult with a representative of Human Resources. All campus members are encouraged to call the Office for Equal Opportunity for advice and assistance.
8. If a formal resolution process has been initiated, make sure you fully understand your rights and responsibilities.

If You Receive A Complaint of Harassment ...

1. Review your responsibilities as a member of the NC State community and particularly the responsibilities of your professional or supervisory position.
2. Read and possess a thorough understanding of the policies and regulations regarding harassment and discrimination.
3. Take prompt and appropriate action.
4. Maintain impartiality. Avoid expressing opinions about the character or ability of the accused or other persons involved. Refrain from making statements about whether you believe or disbelieve the grievant or whether you believe or disbelieve that harassment has occurred.
5. Maintain confidentiality. Take care to avoid making promises of complete confidentiality because others may need to be involved in the resolution of the complaint.
6. Help the complaining party understand the options available to them for addressing and resolving their complaint.
7. Maintain documentation regarding any matters involving discrimination or harassment.
8. Consult with the Office for Equal Opportunity regarding any and all complaints. EPA or SPA employees who present a complaint may consult with Human Resources.

Note:

The Office for Equal Opportunity is a valuable resource for administrators. If there is any doubt about the most appropriate means of addressing a complaint or the potential for an action or situation to become a complaint, consult with the Office for Equal Opportunity.

Filing a Complaint

If you think you have been subjected to unlawful harassment or a violation of university policy, it is important to maintain an accurate record of the incident(s) for several reasons:

1. If you choose to formally file a complaint, then a written statement will be needed from you.
2. If you choose not to do anything now, you may still decide to follow through with some or all of the claim process at a later time. Documenting the incident(s) now will ensure that information is complete and accurate, rather than depending on your memory to recall the details at a later time.
3. If you choose not to do anything now or later, writing about the incident(s) may still be helpful to the healing process.

The following outline is suggested to assist you with documenting the incident(s).

Sample Signed Complaint

To: Office for Equal Opportunity (all employees, faculty, and students) *or*
Human Resources (EPA or SPA employees)

From: [your name]

Date: [date that the statement is written]

Re: Unlawful Harassment Claim

Description of the Incident(s):

Include as much of the following descriptive information as possible. This section should be strictly factual and should not contain any editorial or judgmental remarks.

Date(s): in chronological order

Time(s): approximate time of day

Place(s): where the incident(s) took place – such as specific buildings and room numbers.

Name(s): of the alleged harasser(s), their position at NC State University, and their relationship to you (co-worker, supervisor, professor, student, etc.). It is also helpful to describe how long you have known each other, in what capacity, and the quality of your relationship.

Name(s): of any witnesses (those who saw or heard the incident) and/or of any individuals you may have told afterwards.

Behavior: specific, detailed information of what was said and/or done and your verbal and/or physical response to the behavior, if any.

Description of Your Response:

This section is for you to state how the incident(s) have affected you. Consider the following questions:

- How has the behavior affected you emotionally and/or physically?
- How has the behavior affected you academically? (if you are a student)
- How has the behavior affected you professionally? (if you are staff or faculty)
- Have you reported the behavior to anyone else? If so, to whom did you report and what response did you receive?

Description of Desired Outcome

Think about how you would like to see the situation resolved. Consider the following questions:

- Do you just want the behavior to stop?
- Do you want to be in an academic or work setting away from the alleged harasser(s)?
- Do you want to be able to tell the alleged harasser(s) how their behavior has affected you?
- Would you be satisfied with an informal resolution? Or would you prefer a resolution that is formalized in some fashion?
- What is the ideal outcome for you? Describe how you would ultimately like to see the situation resolved.

Signature:

Sign your name on the last page. Check your university status then deliver or mail your statement to:

All Employees, Faculty, and Students:

Director of Harassment Prevention Programs
Office for Equal Opportunity
Box 7530 / 1 Holladay Hall
Raleigh, NC 27695-7530

EPA or SPA Employees:

Human Resources
Box 7210 / 2711 Sullivan Drive
Raleigh, NC 27695-7210

False Claims

To knowingly file a false complaint is itself a form of harassment. Such conduct may be pursued in the same manner as any other claim of harassment. A grievant found to have been intentionally dishonest in making their claim or to have made a claim maliciously is subject to University discipline.

Investigation Overview

Investigative Process

For each incident of alleged harassment, the investigative process is very important. Below are the guidelines the OEO Director or HR representative follows when conducting an investigation of a harassment complaint. If a supervisor/administrator assists with an investigation, it is important to keep the following guidelines in mind.

Identify the Issues

What factual issues need to be explored? What credibility issues can be anticipated at this stage? What is at stake for the involved parties? What emotions or attitudes might the parties have attached to the issues? What expectations do the parties have for each other at this stage?

Sources of Information

There are several physical sources one may identify:

- **Records and documents:** personnel files, university and/or departmental policies, records of prior complaints, police reports, etc.
- **Physical evidence:** letters, notes, pictures, audio or video tapes, clothing, and an inspection of the physical site of the alleged harassment may be helpful.
- **Witnesses:** ask both the grievant and the respondent to submit names of potential witnesses for consideration; identify all persons who may have information relevant to the issues; determine each witnesses' relevance to the complaint and their relationship with grievant, the respondent, and other witnesses and potential witnesses.

Investigation Timeline

Set up a schedule for reviewing documents and other evidence, interviewing witnesses, analyzing results, and making a final determination.

Witness Interviews

It may be helpful to design the sequence of interviews to match the sequence of events; however, with large numbers of witnesses, scheduling conflicts may not allow for this. When scheduling interviews with witnesses who are co-workers and/or close friends, try to set up a sequence that will minimize their opportunity to discuss the investigation with each other between your interviews with them. The less discussion between witnesses between interviews, the more reliable the testimony. Regardless of the approach used, it may be necessary to re-interview the grievant and/or respondent or even other witnesses to clarify points brought out in other witness interviews. Also, see the detailed section in this chapter titled **Witness Interviews**.

Evidence Credibility

There are several elements to be examined that will help one assess the credibility of any evidence gathered:

- **Consistency:** between witnesses' statements, between statements and physical evidence, can discrepancies be adequately explained?
- **Inherent plausibility:** are statements believable at face value? Or do the statements seem to stretch belief?
- **Demeanor of the witnesses:** Did the grievant, respondent, or any of the witnesses appear to be lying? Are there signs of excessive nervousness, defensiveness, or undue hesitation in answering certain questions (bear in mind the expected levels of stress associated with an investigation of a sensitive situation).
- **Motives to falsify:** Does the grievant, respondent, or any of the witnesses appear to have any reason to falsify information? Look for personal interest in the outcome beyond what the grievant and respondent may want such as a direct interest in the subject matter of the complaint, an indirect interest in supporting or opposing one of the parties, or personal factors such as friendships, family relationships, or grudges.
- **Authenticity of physical evidence:** Do the supporting documents appear to be genuine? Has any physical evidence been tampered or otherwise compromised? If so, by whom and for what purpose?

Analysis of Results

After reviewing all relevant evidence and interviewing all necessary witnesses one should have a mostly complete set of facts and may begin to draw some conclusions. In some cases, an investigation will reveal there is no real dispute about what happened. The only question is whether the conduct that occurred was harassment. In other cases, the grievant and the respondent will disagree sharply about what happened, or indeed, if anything happened at all. Where the facts are in dispute, analysis of the investigation generally will include an assessment of credibility and a comparison of the relative weight of the evidence supporting and contradicting the complaint.

Final Determination

A thorough analysis will suggest the final determination of the potential findings. There may be situations when the complaint has been reasonably substantiated but the investigator is reluctant to label the conduct as harassment based on other mitigating factors uncovered during the investigation. It is acceptable to label conduct as “inappropriate behavior” or some other similar term when the investigation results do not clearly and unequivocally indicate harassment. Investigators are obligated to clearly label conduct as harassment when there has been a harassment violation of university policy.

Note:

A finding of harassment is a legal conclusion and should be made only in consultation with the Office of Legal Affairs.

The following are a variety of terms one might use to describe a final determination of a harassment complaint. It is important to be as clear and precise as possible so that there will be no misunderstanding.

- complaint substantiated in full – finding of harassment
- complaint substantiated in part – finding of harassment
- complaint substantiated in full – finding of inappropriate behavior
- complaint substantiated in part – finding of inappropriate behavior
- complaint not substantiated – no finding of any wrong-doing
- complaint not substantiated – false complaint

Potential Resolution Sanctions

If a complaint has been substantiated in full or in part, the next step is to determine the appropriate resolution of the case. The primary goals of a resolution strategy are to stop the harassing behavior, prevent its recurrence, and to provide assistance to the victim. Terminating harassing conduct and preventing its recurrence are achieved by imposing appropriate limitations and sanctions on the respondent.

1. **Education:** educating the respondent is often the best way to prevent recurrence of harassment. These measures should be oriented toward achieving a clear understanding of how the respondent's inappropriate behavior affected the grievant and others. Even if the respondent continues to disagree about the inappropriateness of their conduct, the respondent should still understand that such behavior will not be tolerated.
2. **Restoration:** reasonable measures should be enacted to provide the grievant with appropriate restoration assistance and to protect the grievant from retaliation. If it is necessary to reassign or transfer one or more of the parties, it should usually be the respondent not the grievant.
3. **Status Sanctions:** all employees are hired and all students enter the university with the assumed status of "in good standing." Imposing status sanctions alters this initial assumption. With the exception of dismissal (which is permanent), all status sanctions should have an appropriate time limitation attached to them clearly indicating specific end dates. Status sanctions for EPA and SPA employees may include:
 - written warning
 - suspension with pay (EPA employees only)
 - suspension without pay
 - reassignment of duties
 - demotion
 - dismissal

If suspension, demotion or dismissal are being considered, consultation with the Office of Legal Affairs is required because these actions entail additional procedures. Status sanctions for SPA employees must be discussed with Human Resources before implementation. Suggested sanctions for students are subject to adjudication by the Student Judicial Process.

4. **Behavioral Sanctions:** these sanctions involve behavioral limitations and/or certain tasks to be completed by the respondent. Action sanctions for EPA and SPA employees may include:

- apology to the grievant
- education/educational consultation
- restitution
- restriction of privileges
- travel restrictions

Suggested sanctions for students are determined by the Student Judicial Process.

Note:

Requiring the respondent to attend educational courses on harassment may seem to be a positive approach. Many individuals in a respondent situation, however, may be resentful of such “forced education,” especially when there is ongoing disagreement regarding what constitutes harassment. Therefore, some individuals may not be good candidates for a general educational course. An alternative approach is to mandate an **educational consultation** with the Office for Equal Opportunity. This setting provides a confidential, one-on-one opportunity for the respondent to talk specifically about the questioned conduct with an informed, yet neutral person who by training and experience is in a position to reduce the defensiveness often felt by the respondent. The purpose of such educational consultations is not to necessarily re-hash the case but to discuss the respondent’s behavior and conduct, understand the position and viewpoint of the grievant, and gain awareness of how the respondent’s actions may violate laws and/or university policies.

Witness Interviews

Context

Before asking any questions regarding the harassment complaint, it is important to give appropriate context to the situation by providing enough background information so the witness is clear about the situation being reviewed. There may be situations wherein the witness may not

know or recall one or more of the individuals involved with the case so this is a natural time to establish that information. Avoid giving an in-depth review of the complaint as this may hinder one's ability to obtain reliable, independent information from the witness.

Confidentiality

Harassment complaints tend to make interesting gossip but they can also damage the reputations of innocent people. Stress the need for confidentiality and emphasize that every effort will be made to maintain the confidentiality of all witnesses and their statements to the highest degree possible.

Questioning

The type of questions one asks often determines what sort of information one receives. Asking open-ended questions (who, what, where, when, how) prompts the witness to give a good deal of information. Closed questions (where the response is usually yes or no) may be good for clarification on more pointed questions but should be used with particular purpose and only after obtaining as much information as possible using open-ended questions. Closed questions sometimes take the form of leading questions wherein the question itself suggests the answer one wants the witness to give. Avoid asking leading questions, even for clarification, as they may lead both the interviewer and interviewee to assume facts that have not yet been established.

After extracting as much information as possible from a witness using open-ended, non-leading questions, the use of more pointed questions on a given point may be used to refresh the witness's recollection or to encourage the witness to be more specific.

Discrepancies

Truth is sometimes stranger than fiction. If a witness makes statements that seem incongruous with other evidence in the case or with common sense, follow up with additional questions to see if there is some satisfactory explanation. Take care to ascertain which statements are based on the witness' own personal knowledge and observations. To the extent a witness' statements are based on their own assumptions, conjecture, hearsay, or gut response, try to pin down the basis for these statements as specifically as possible.

It is tempting to ignore minor details that do not seem to make sense; however, if some aspects of a witness' statements are incongruous or unclear, it will cast doubt on that witness' credibility. An investigator should be diligent in their questioning to determine whether a satisfactory explanation can be found.

Rights and Responsibilities

Grievant Rights and Responsibilities

1. You have the **right** to bring forward a complaint of harassment without suffering from retaliation. All reasonable efforts will be made to provide protection from retaliation.
2. You have the **right** to know the steps taken to resolve your claim. You will be fully informed by the Office for Equal Opportunity or Human Resources regarding the status of your claim.
3. You have the **right** to be notified of the final disposition of your claim. Understand that substantiated complaints leading to personnel action(s) against the respondent are privileged and will not be shared with you except in those cases where behavioral limitations are imposed on the respondent that directly involve you.
4. You have the **right** to formally appeal any decisions made and/or actions taken resulting from your claim. The Office for Equal Opportunity may advise you regarding your appeal rights.
5. You have the **right** to file a charge of harassment with the Equal Employment Opportunity Commission (EEOC) or the Office for Civil Rights (OCR). The Office for Equal Opportunity may advise you regarding these filing rights.
6. You have the **responsibility** of providing as much information as possible as requested by the investigators of your claim in order to provide a fair and just resolution. Understand that only individuals directly involved with the investigation will have access to the information you provide. If the complaint results in a formal appeals process, the information you provide may be used in the appeals process.
7. You have the **responsibility** of maintaining confidentiality. Disclosure of the existence, nature, or details of the case to any individual not directly involved is prohibited. This protects your own privacy as well as that of the respondent, witnesses, and other involved parties.
8. You have the **responsibility** of refraining from any effort to do your own investigation. To do so would complicate and possibly contaminate efforts to investigate the complaint thoroughly and effectively.

9. You have the **responsibility** to refrain from contacting the respondent during the investigation regarding the investigation. If at all possible, it is best to refrain from any contact.
10. You have the **responsibility** of conducting yourself in a civilized and professional manner if and when you and the respondent must have some form of contact.
11. You have the **responsibility** of understanding the basics of what constitutes unlawful harassment. The Office for Equal Opportunity or Human Resources will provide information for you to possess this knowledge. Understand that intentionally false complaints are considered misconduct and subject to disciplinary measures.

Respondent Rights and Responsibilities

1. You have the **right** to an opportunity to fully respond to the complaint of harassment.
2. You have the **right** to know the steps taken to resolve the complaint. The Office for Equal Opportunity or Human Resources will inform you regarding the status of the claim.
3. You have the **right** to be notified of the final disposition of the claim. Understand that substantiated complaints leading to personnel action(s) against you are privileged and will not be shared with the grievant except in those cases where behavioral limitations are imposed on you that directly involve the grievant.
4. You have the **right** to formally appeal any decisions made and/or actions taken resulting from the claim. The Office for Equal Opportunity will advise you regarding your appeal rights. SPA employees should refer to the **SPA Grievance and Appeal** policy.
5. You have the **right** to be protected from intentionally false complaints. Such claims are considered misconduct and are subject to disciplinary measures.
6. You have the **responsibility** of providing full and accurate information in order to provide for a fair and just resolution. Understand that only individuals directly involved with the investigation will have access to the information you provide. If the complaint results in a formal appeals process, the information you provide may be used in the appeals process.
7. You have the **responsibility** of maintaining confidentiality. Disclosure of the existence, nature, or details of the case to any individual not directly involved

is prohibited. This protects your own privacy as well as that of the grievant, witnesses, and other involved parties.

8. You have the **responsibility** of refraining from any effort to do your own investigation. To do so would complicate and possibly contaminate efforts to investigate the complaint thoroughly and effectively.
9. You have the **responsibility** to refrain from taking any action against the grievant that could be considered retaliation.
10. You have the **responsibility** to refrain from contacting the grievant during the investigation regarding the investigation. If at all possible, it is best to refrain from any contact. If and when you and the grievant must have some form of contact, you have the **responsibility** of conducting yourself in a civilized and professional manner.

Witness Rights and Responsibilities

1. You have the **right** to protection from any adverse employment and/or academic action resulting from your participation in an unlawful harassment investigation. An exception exists if the investigation reveals your own misconduct of some kind.
2. You have the **right** to confidentiality. The fact or nature of your participation in an investigation will not be disclosed to anyone except the primary parties involved.
3. You do **not** have the **right** to be notified of the final disposition of the claim. The investigation, its findings, and final disposition are considered privileged information and will not be shared with you except in those cases where behavioral limitations are imposed on one or more parties that directly involve you.
4. You have the **responsibility** to provide full and accurate information as requested by the investigators of the claim in order to provide a fair and just resolution. Understand that only individuals directly involved with the investigation will have access to the information you provide. If the complaint results in a formal appeals process, the information you provide may be used in the appeals process.
5. You have the **responsibility** of maintaining confidentiality. Disclosure of the existence, nature, or details of the case to any individual not directly involved is prohibited. This protects your own privacy as well as that of the grievant, the respondent, other witnesses, and other involved parties.

6. You have the **responsibility** of refraining from any effort to do your own investigation. To do so would complicate and possibly contaminate efforts to investigate the complaint thoroughly and effectively.
7. You have the **responsibility** to refrain from taking any action against the grievant or the respondent that could be considered retaliation.

Resolution Process Overview

Most claims of harassment and discrimination follow the steps listed below. This is a general guideline – because each case is individually assessed, other actions not listed below may be taken.

1. The individual (either the grievant or the responding party) contacts the Office for Equal Opportunity (OEO); or if the individual is an EPA or SPA employee, with Human Resources (HR).
2. The OEO Director or HR representative meets with the grievant. (Sometimes the process ends with only a few consultation sessions with the grievant.)
3. The OEO Director or HR representative meets with the responding party (this may be done by letter or in person, with or without the grievant present).
4. Options for resolution are discussed and chosen by the grievant (options include but are not limited to assisted resolution, mediation, filing a formal complaint with the appropriate university body, or filing a formal complaint with state and/or federal agencies).
5. The OEO Director or HR representative facilitates the selected courses of action.
6. If appropriate, the OEO Director or HR representative may contact the supervisor
7. Complaint resolved.

Process Differences

Particular courses of action may depend on the position of the alleged harasser. There are different authoritative offices and policies governing the conduct of students, EPA employees, and SPA employees, respectively.

If the Harasser Is a Student ...

Then the Harassment Resolution Process can be utilized for consultation and mediation only. Since supervisory authority for students exists in the context of formal hearings of specific harassment charges, the OEO Director may assist with mediation (voluntary resolution between the parties) but may not necessarily be involved in any hearing process.

The grievant may file charges through the Office of Student Conduct, thus initiating the Student Judicial Process. The OEO Director may assist the Office of Student Conduct with any investigative proceedings. See **Chapter 4** for the full text of the Uniform Student Grievance Procedure and the Resolution Procedures for Harassment Complaints.

Grievants may also file a complaint with the Equal Employment Opportunity Commission (EEOC) or the Office for Civil Rights (OCR) concurrent with NC State University processes.

If the Harasser Is an EPA Employee ...

The Harassment Resolution Process is the only internal process available to the grievant and can be utilized to the fullest degree, including consultation, mediation, investigation, and sanctions as warranted. See **Chapter 4** for the full text of the Grievance Procedure for Faculty and EPA Employees and the Resolution Procedures for Harassment Complaints.

Grievants may also file a complaint with the EEOC or OCR, concurrent with NC State University processes.

If the Harasser Is a SPA Employee ...

The Harassment Resolution Process is the only internal process available to the grievant and can be utilized to the fullest degree, including consultation, mediation, investigation, and sanctions as warranted. See **Chapter 4** for the full text of the SPA Grievance and Appeal policy and the Resolution Procedures for Harassment Complaints.

Grievants may also file a complaint with the EEOC or the Office of Administrative Hearings concurrent with NC State University processes.

If a grievant chooses to file a claim with an outside agency such as the Equal Employment Opportunity Commission, Office for Civil Rights, or the Office of Administrative Hearings, it is advisable to review that agency's time limits for presentation of a claim (see table below). Please refer to specific information available from each of these organizations (see **Chapter 5: Resources** for links to these agencies) or contact the Director of Harassment Prevention Programs.

TIME LIMITS FOR FILING OF CLAIMS

Agency	Type of Unlawful Harassment	Referent Act/Statute	Time Limit
Equal Employment Opportunity Commission (EEOC) ¹	race, color, sex religion, national origin	Title VII of Civil Rights Act	180 days
	disability	Americans with Disabilities Act	180 days
	age	Age Discrimination in Employment Act	180 days
	sex	Equal Pay Act	180 days
Office for Civil Rights (OCR) ²	race, color, national origin	Title VII of Civil Rights Act	180 days
	sex	Title IX of Education Amendments	180 days
	disability	Sec. 504 of Rehabilitation Act of 1973, and Title II of Americans with Disabilities Act	180 days
	age	Age Discrimination Act of 1975	180 days
Office of Administrative Hearings (OAH) ³	race, color, creed, religion, sex, national origin, disability	NC G.S. §168A-3	30 days
<p>¹ In states or localities where there is an antidiscrimination law and an agency authorized to grant or seek relief, a charge must be presented to that state or local agency. Furthermore, in such jurisdictions, you may file charges with EEOC within 300 days of the discriminatory act, or 30 days after receiving notice that the state or local agency has terminated its processing of the charge, whichever is earlier.</p> <p>² If a court complaint is filed concurrent with the OCR, the OCR will not pursue the claim.</p> <p>³ The Office of Administrative Hearings (OAH) in the Office of State Personnel (OSP) is a designated deferral agency (a Fair Employment Practices Agency) for the EEOC. A claim filed with OAH will initially be examined by the EEOC for appropriateness. If appropriate, the claim is returned to OAH for processing. If the claim is deemed inappropriate, the claim is returned to the EEOC.</p>			

Notification of Resolution

Once a final decision has been made regarding the substantiation of the complaint, both the grievant and respondent will be notified.

Grievant Notification

The OEO Director of Harassment Prevention Programs will contact the grievant to let him or her know the investigation is completed and the report

has been given to the supervisor/administrator. No personnel information will be shared with the grievant.

If there is a finding of inappropriate behavior by the respondent, the supervisor/administrator will explain *only* the behavioral limitations that have been imposed on the respondent that also involve the grievant so that the grievant may report if such limitations are breached. For example, the respondent may be instructed not to have any contact with the grievant for a certain period of time – this is a behavioral limitation that also involves the grievant and should be properly communicated to the grievant.

In order to protect the privacy of the respondent, the existence or nature of any status or action sanctions against the respondent are considered confidential and are *not* to be shared with the grievant.

In both substantiated and unsubstantiated cases, the supervisor/administrator should send a letter to the grievant regarding the findings. In substantiated cases where behavioral sanctions have been imposed on the respondent that also involve the grievant, these limitations should be outlined as well as reporting procedures should the respondent breach their behavioral limitations.

Letter to Grievant

Below is a sample letter from a Department Head/Supervisor/Administrator to a grievant advising the grievant of the findings regarding the claim investigation and the sanctions imposed on the respondent if and when such sanctions directly involve the grievant. Recall that if a respondent receives sanctions that do not directly involve the grievant, this information is privileged and not shared with the grievant.

Note:

This letter is only a sample. Different formats, findings, recommendations, or sanctions may be necessary depending on the situation and the results of the investigation. Additionally, all written correspondence with the grievant and/or respondent should be reviewed by the Office of Legal Affairs prior to sharing with the grievant and/or respondent.

Sample Letter to Grievant

[Date]

[Name of Grievant]

NC State University Campus

Box # _____

Raleigh, NC 27695 - _____

Dear [Name of Grievant]:

I would like to take this opportunity to summarize our previous discussions. The claim you brought forward alleging unlawful harassment was presented to [Respondent's Name]. Respondent did not necessarily deny the accusations but rather provided a different interpretation of the conduct. A full investigation has been conducted which involved interviews with seven witnesses, a review of the complaint, and the Respondent's full response.

I have concluded that your claim is credible and legitimate. Respondent's behavior violates NC State University's Unlawful Harassment Policy (Reg. 1120.00.4)

As the grievant in this case, you are being provided with information regarding the sanctions being imposed on the Respondent. The information below involves you and your participation in University and Departmental activities so it is important that you have it. Other information regarding the respondent is privileged and confidential.

Action Sanction: Respondent is prohibited from participation in specific departmental activities effective immediately through [end date].

Departmental Commencement – attendance is prohibited at any planning meetings or functions; attendance is acceptable at the actual Commencement ceremonies (University, College, and Departmental

Behavior Sanction: Respondent is prohibited from certain interactions with you and may have limited interaction as outlined below effective immediately and remains in effect as long as you are both members of the NC State University community:

Respondent may not visit Grievant's office unless it is unavoidable and concerning departmental business only. In such a case, Respondent is to notify Grievant in advance by telephone.

Respondent may not communicate with Grievant via telephone unless it is unavoidable and concerning departmental business only.

Respondent may not communicate with Grievant via U.S., campus, or electronic mail unless it is unavoidable and concerning departmental business only.

Respondent is not to initiate any conversation with Grievant unless it is unavoidable and concerning departmental business only.

Respondent is responsible for taking all steps necessary to avoid interactions with you.

There are certain departmental and University activities that are necessary for both Grievant and Respondent to attend or have the opportunity to attend. In such a case, it is the Respondent's responsibility to keep physically removed from Grievant and to avoid any interactions and conversations with Grievant.

Note: If you have information that any of the sanctions above are not being strictly followed, you should document such information in a letter to the Director Harassment Prevention Programs (Box 7530, 1 Holladay Hall, Raleigh NC 27695-7530). You are discouraged from taking your complaint directly to Respondent in order to avoid any contact or confusion regarding your claim and these sanctions).

You are encouraged to fully participate in University and Departmental activities. You should feel free to perform the duties of your work and conduct yourself as you normally would without fear of undue interaction or attention from Respondent. You are a valuable member of the university community and are encouraged to challenge yourself professionally.

If you believe these conclusions and decisions have been reached improperly or unfairly, you have the right to appeal. For information regarding appeal routes, EPA employees may refer to **Resolution Procedures for Harassment Complaints** (Reg. 04.25.2) and SPA employees may refer to **SPA Grievance and Appeal** (Reg. 5.25.2). Both policies are available for review at: <http://www.ncsu.edu/policies/homepage.php>.

All information and materials regarding your claim and its investigation, including the Respondent and their statements, and witness information and participation are confidential and should remain so. It is your responsibility to help maintain this confidentiality for the protection of your own privacy as well as the privacy of the others involved in this matter.

It is my belief that appropriate actions have been taken to ensure that you will not be subject to inappropriate behavior by the Respondent in the future. Please feel free to call me if you have any additional questions regarding this claim and its resolution.

Sincerely,

Department Head/Supervisor/Administrator

cc: Director Harassment Prevention Programs *or* Human Resources

Respondent Notification

The supervisor/administrator should personally meet with the respondent to explain the findings of the investigation and answer any questions the respondent may have. Detailed explanations of any actions to be taken as a result of the findings should be clearly communicated to the respondent.

In both substantiated and unsubstantiated cases, the supervisor/administrator should send a letter to the respondent regarding their findings. In substantiated cases where behavioral, status, or action sanctions have been imposed on the respondent, these limitations should be clearly outlined and explained in detail. A copy of this letter to the respondent outlining any sanctions should be placed in the respondent's personnel or student record.

In unsubstantiated cases where there is no finding of inappropriate behavior, no statement or letter regarding the findings is to be placed in the respondent's personnel or student record *except* at the request of the respondent.

Letter to Respondent

This is a sample letter from a Department Head/Supervisor/Administrator to a respondent advising the respondent of the findings regarding the claim investigation and the sanctions being imposed on the respondent. Recall that if a respondent receives sanctions that directly involve the grievant, this information is shared with the grievant. If the sanctions do not directly involve the grievant, this information is privileged and not shared with the grievant.

Note:

This letter is only a sample. Different formats, findings, recommendations, or sanctions may be necessary depending on the situation and the results of the investigation. Additionally, all written correspondence with the grievant and/or respondent should be reviewed by the Office of Legal Affairs prior to sharing with the grievant and/or respondent.

Sample Letter to Respondent

[Date]
[Name of Respondent]
NC State University Campus
Box # _____
Raleigh, NC 27695 - ____

Dear [Name of Respondent]:

I would like to take this opportunity to summarize our previous discussions. We spoke concerning an allegation of unlawful harassment that was filed against you by [Grievant]. You were given an opportunity to respond to the complaint. In your response, you did not necessarily deny the accusations but rather provided a different interpretation of your behavior and more information about Grievant’s actions and how they have affected your response in dealing with this situation.

A full investigation has been conducted which involved interviews with seven witnesses, a review of the complaint, and your full response.

I have concluded that [Grievant’s] claim is credible and legitimate. Your behavior violates NC State University’s Unlawful Harassment Policy (Reg. 04.25.4)

I recognize this situation has been very painful and troubling for you. However, it would be unfair to expect the Grievant to limit their activities, both academic and personal, within the department, specifically the activities in which you both have participated in the past. This burden should not fall on the person who has presented the harassing behavior. It is clearly your responsibility to limit your contact with Grievant and discontinue the inappropriate behavior immediately.

The following sanctions are being imposed because of your conduct and past history of this behavior. Please note that the Written Warning (1) and Prohibited Participation (3) sanctions are effective immediately and remain so until [end date]. The limitation on your contact with Grievant is effective immediately and remains in effect as long as both of you are members of the NC State University community.

Status Sanction: Written Warning, effective immediately and lasting through [end date].

Action Sanction: You are required to attend an Unlawful Harassment Workshop. You are responsible for contacting the Office for Equal Opportunity about upcoming workshops and registration. You may also obtain this information by checking NC State University’s Human Resources web page (www.ncsu.edu/hr). The treatment provider will forward documentation indicating completion of the program to the Director of Harassment Prevention Programs.

Action Sanction: Respondent is prohibited from participation in specific departmental activities effective immediately through [end date].

Departmental Commencement – attendance is prohibited at any planning meetings or functions; attendance is acceptable at the actual Commencement ceremonies (University, College, and Departmental).

Behavior Sanction: Respondent is prohibited from certain interactions with Grievant and may have limited interaction as outlined below effective immediately and remains in effect as long as you both are members of the NC State University community:

Respondent may not visit Grievant's office unless it is unavoidable and concerning departmental business only. In such a case, Respondent is to notify Grievant in advance by telephone.

Respondent may not communicate with Grievant via telephone unless it is unavoidable and concerning departmental business only.

Respondent may not communicate with Grievant via U.S., campus, or electronic mail unless it is unavoidable and concerning departmental business only.

Respondent is not to initiate any conversation with Grievant unless it is unavoidable and concerning departmental business only.

Respondent is responsible for taking all steps necessary to avoid interactions with Grievant.

There are certain departmental and University activities that are necessary for both Grievant and Respondent to attend or have the opportunity to attend. In such a case, it is the Respondent's responsibility to keep physically removed from Grievant and to avoid any interactions and conversations with Grievant.

Please note the Grievant will be notified of the final finding in this case as well as Action Sanction (3) and Behavior Sanction (4) because these sanctions directly involve the Grievant. Grievant is encouraged to report any breaches of these sanctions. Status Sanction (1) and Action Sanction (2) are considered privileged information so their nature and existence will not be shared with Grievant.

Please note that future violations of NC State University policies can and will result in more severe sanctions, including but not limited to suspension or termination of employment.

If you believe these conclusions and decisions have been reached improperly or unfairly, you have the right to grieve any disciplinary action against you. For information regarding grievance and appeal routes, EPA employees may refer to **Grievance Procedures for Faculty and EPA Employees** (Pol. 05.25.1) and SPA employees may refer to **SPA**

Grievance and Appeal (Reg. 5.25.2). Both policies are available for review at: <http://www.ncsu.edu/policies/homepage.php>.

All information and materials regarding your claim and its investigation, including the Grievant's claim, and witness information and participation are confidential and should remain so. It is your responsibility to help maintain this confidentiality for the protection of your own privacy as well as the privacy of the others involved in this matter.

You are a valued member of the [_____ Department]. You have contributed greatly not only to our department but also to the University. I encourage you to build a support network that will enable you to process and understand this matter effectively. You remain a valuable member of the university community and are encouraged to challenge yourself professionally. Please feel free to call me if you have any additional questions regarding this claim and its resolution or if I can be of any assistance.

Sincerely,

Department Head/Supervisor/Administrator

cc: Director of Harassment Prevention Programs *or* Human Resources

Legal Issues

This section briefly examines both federal and state legislation related to unlawful harassment and discrimination and the ways these laws inform NC State University policies. The text of many of these pieces of legislation are too lengthy to include here; however, links to legislation are available on the worldwide web and may be found in Chapter 5: Resources.

Federal and North Carolina legislation regarding discrimination and harassment form the basis and nature of NC State University's harassment policies and procedures. As with many other large institutions, NC State University's internal policies on various issues are often created after the courts have made rulings clarifying protections and providing appropriate proactive stances.

By law, NC State University is required to provide protection from discrimination and harassment as defined by federal and state laws. Further, NC State University is subject to the interpretation of these laws in a judicial setting should the University be named in a lawsuit. The university is also required to follow certain regulations of the Equal Employment Opportunity Commission (EEOC) and the Office for Civil Rights (OCR).

Note:

Both federal and state laws may be altered and new laws created with each legislative session. The legislative information contained in this section is current at time of publication; however, the reader is advised to check for legislative changes periodically and to consult with the Office of Legal Affairs regarding the effect of these changes on NC State University policy.

Federal Legislation

There are several Federal Acts and particular sections of Acts that deal with issues of harassment and discrimination. The EEOC and the OCR are two of the agencies that enforce this body of legislation and also provide oversight and coordination of federal equal employment opportunity regulations, practices, and policies. The U.S. Justice Department, the Office of Federal Contract Compliance, and the U.S. Department of Labor are some of the other agencies charged with enforcement. Described below are some of the most important legislative acts regarding harassment and discrimination.

The Equal Pay Act of 1963

The Equal Pay Act of 1963 (EPA) prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions. The EPA is an amendment of the Fair Labor Standards Act of 1938 and covers all employers who are covered by the Federal Wage and Hour Law of the Fair Labor Standards Act. Virtually all employers are subject to the provisions of this Act.

Title VI of the Civil Rights Act of 1964

The 1964 Civil Rights Act covers many subjects, including public accommodations and services in addition to employment discrimination. Title VI prohibits discrimination on the basis of race, color, or national origin in programs and institutions receiving federal financial assistance. Virtually all public schools (including colleges and universities) and some private schools receive some form of federal financial assistance. Generally, all the programs in such an institution are covered. Those covered by Title VI include not only students but also parents and, to a limited extent, employees.

Title VII of the Civil Rights Act of 1964

Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex. Title VII covers all private employers, federal, state and local governments, and educational institutions that employ 15 or more individuals. These laws also cover private and public employment agencies, labor organizations, and joint labor management committees controlling apprenticeship and training.

The Age Discrimination in Employment Act of 1967

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older. It is an amendment of the Fair Labor Standards Act of 1938 and covers all employers who are covered by the Federal Wage and Hour Law of the Fair Labor Standards Act. Virtually all employers are subject to the provisions of this Act. An age limit may only be specified in the rare circumstance where age has been proven to be a *bona fide occupational qualification* (BFOQ).

Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities which receive Federal financial assistance. Title IX states, in part, that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Office for Civil Rights enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education. These civil rights laws enforced by OCR extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds. Areas covered may include, but are not limited to: admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment. Also, a recipient may not retaliate against any person because he or she opposed an unlawful educational practice or policy, or made charges, testified, or participated in any complaint action under Title IX.

The Rehabilitation Act of 1973

Sections 501 and 505 of the Rehabilitation Act of 1973 prohibit discrimination against qualified individuals with disabilities who work with the federal government and recipients of federal funds. Section 504 prohibits discrimination based on disability in programs or activities receiving federal financial assistance. This body of law and its interpretations have been incorporated into the Americans with Disabilities Act of 1990.

The Americans With Disabilities Act of 1990

Title I and Title V of the Americans With Disabilities Act of 1990 (ADA) prohibit employment discrimination against qualified individuals with disabilities in all employment practices. Title II and Title III prohibit discrimination based on disability in public entities receiving federal financial assistance. It is necessary to understand several important ADA definitions to know who is protected by the law and what constitutes unlawful discrimination.

Individual With a Disability

An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include such activities as walking, breathing, seeing, hearing, speaking, learning, and working.

Qualified Individual With a Disability

A qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.

Reasonable Accommodation

Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities; job restructuring; modification of work schedules; providing additional unpaid leave; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities. An employer is not required to lower production standards to make an accommodation. An employer generally is not obligated to provide personal use items such as eyeglasses or hearing aids. Reasonable accommodation also applies to educational programs and facilities. Educational facilities receiving federal financial assistance may be required to provide certain disability services for students.

Undue Hardship

An employer is required to make a reasonable accommodation to a qualified individual with a disability unless doing so would impose an undue hardship on the operation of the employer's business. Undue hardship means an action that requires significant difficulty or expense

when considered in relation to factors such as a business' size, financial resources, and the nature and structure of its operation.

Direct Threat

In evaluating reasonable accommodation, employers assess whether there exists a significant risk of substantial harm to the health or safety of the disabled individual or of others, and if that risk can be lowered to an acceptable level by reasonable accommodation. Employers and public entities are required to base direct threat assessments on reliable medical or other objective evidence, not stereotypes, ignorance, or fear.

Prohibited Inquiries and Examinations

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of employees must be job-related and consistent with business necessity.

Drug and Alcohol Use

Employees and applicants currently engaging in the illegal use of drugs are not protected by the ADA when an employer acts on the basis of such use. Tests for illegal use of drugs are not considered medical examinations and, therefore, are not subject to the ADA's restrictions on medical examinations. Employers may hold individuals who are illegally using drugs and individuals with alcoholism to the same standards of performance as other employees.

The Civil Rights Act of 1991

The Civil Rights Act of 1991 made major changes in the federal laws against employment discrimination enforced by EEOC. Enacted in part to reverse several Supreme Court decisions that limited the rights of persons protected by these laws, the Act also provides additional protections. The Act authorizes compensatory and punitive damages in cases of intentional discrimination, and provides for obtaining attorneys' fees and the possibility of jury trials. It also directs the EEOC to expand its technical assistance and outreach activities.

First Amendment Issues

The First Amendment addresses freedom of expression, an essential element for universities where a broad range of ideas, controversial topics, and

unconventional thought are not only permitted but also encouraged. It applies not only to governments but also to government run institutions including public universities. One of the goals of a university is to give students the opportunity to hear and sort through a wide variety of ideas. There are many ways the First Amendment intersects with other federal and state legislation and university policies. Potential First Amendment issues tend to be highly fact and context dependent so there are no hard and fast rules for determining when a person's First Amendment rights may have been abridged.

The First Amendment reads:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Speech may take many forms. The courts have included pure speech (spoken words) and symbolic speech (written words, music, symbols, and non-verbal expressions such as flag-burning and theater productions). The freedom of expression protections offered in the First Amendment protect speech regardless of how trivial, offensive or vulgar its content. At universities, the concept of **academic freedom** (the right of teachers to conduct their classrooms and studies in the way they see fit and to deal with issues of public concern) is not specifically addressed in the First Amendment; however, U.S. Supreme Court cases have established protection for academic freedom in line with other values of the First Amendment. Freedom of speech applies to everyone on campus: faculty, staff, students, visitors, and guest speakers. Some restrictions may apply depending on a person's status at the university and the nature of their speech.

This protection of speech is not absolute and it does not mean individuals have the right to say whatever they want wherever they want. There are a number of speech prohibitions including:

- defamation (libel and slander)
- blackmail
- perjury
- solicitations of illegal conduct
- fraudulent misrepresentation
- unlawful harassment

- obscenity
- child pornography
- falsification of research
- copyright infringement
- plagiarism
- threats
- fighting words
- threats of unlawful violence, where a reasonable person would expect the threats would be carried out
- expression that crosses the line from speech to conduct

Note:

The term *obscenity* tends to be ambiguous and is context dependent. Pornography, generally, is constitutionally protected speech; however, if it reaches an extreme of offensiveness, it becomes obscenity and loses its First Amendment protection.

Note:

The U.S. Supreme Court defined “fighting words” in *Chaplinsky v. New Hampshire* (1942) as words having a “direct tendency to cause acts of violence by the persons to whom, individually, the remark is addressed ... words which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” One key element of the fighting words doctrine is that this particular form of speech must occur face to face.

In public fora the government may place content-neutral restrictions on the time, place, and manner in which the speech occurs; however, this does not mean access can be denied. **In regard to academic freedom, context is especially important.** In a limited or non-public forum, such as a classroom, speech that is germane to the subject matter is protected whereas speech that is not germane to the subject matter is afforded considerably less protection. Restrictions may also be placed on employees of a public academic institution, protecting speech addressing matters of public concern and less protection for speech addressing internal institutional matters.

Although few cases have been tested by the courts regarding the First Amendment and use of computers and related advanced technologies at public institutions, the courts have generally viewed computers as another avenue of expression. The privileges and prohibitions that apply to speech off the internet, apply to speech on the internet. However, there are some legitimate restrictions. For example, university computer labs may be designated “for curricular use only” and all personal use on such computers may be banned. In public areas where personal use of computers is allowed, a public institution is limited in the restrictions it may place on such use. The university may place content-neutral restrictions (time, place, and manner) on computer use. For example, personal use of university computers may be limited to an employee’s personal time.

The federal and state statutes prohibiting harassment do not supersede the First Amendment. Although harassment usually refers to actions, not speech, harassment does not necessarily require physical contact. When speech or conduct is unwanted, severe or pervasive, objectively interferes with the targeted person’s ability to work or get an education, and is based on a category protected by civil rights laws, it is unlawful harassment. Such harassment is not constitutionally protected free speech.

Note:

See the section titled **Memorandum Regarding NC State University Computers and Pornography** and the **Computer Use Policy** and the **Computer Use Regulation** in Chapter 4 for detailed information regarding this particular issue.

Questions regarding First Amendment issues should be directed to the Office of Legal Affairs (515-3071).

North Carolina Legislation

Many states and localities have anti-discrimination laws and agencies responsible for enforcing those laws. The EEOC refers to these agencies as "Fair Employment Practices Agencies" (FEPAs). Through the use of work sharing agreements, EEOC and the FEPAs avoid duplication of effort while at the same time ensuring that a charging party's rights are protected under both federal and state law.

- If a charge is filed with a FEPA and is also covered by federal law, the FEPA "dual files" the charge with EEOC to protect federal rights. The charge usually will be retained by the FEPA for handling.

- If a charge is filed with EEOC and also is covered by state or local law, EEOC "dual files" the charge with the state or local FEPA, but ordinarily retains the charge for handling.

Note:

In North Carolina, the Office of Administrative Hearings (OAH) in the Office of State Personnel (OSP) is the designated FEPA.

North Carolina laws address many of the same harassment and discrimination issues as federal laws. State law supports federal legislation and in some cases goes even further in providing protection for additional classes. For example, North Carolina has extended protection to the same protected classes as the EEOC and has also extended protection to a person's *creed*. State employees in non-elected, non-appointed positions are also protected on the basis of their political affiliation. In addition to protecting persons with disabilities, North Carolina employment laws also protect persons with certain medical conditions such as sickle cell anemia and AIDS or HIV infection.

North Carolina employment laws are enforced by the Commissioner of Labor in conjunction with a jurisdiction's district attorneys or the state's Attorney General. The Commissioner is elected by the people to serve a four-year term as the executive and administrative head of the Department of Labor. Employment laws are also enforced by the Office of Administrative Hearings, Office of State Personnel, and NC State University depending on an individual's employment classification.

General Statutes

North Carolina's General Assembly is the legislative body responsible for crafting the laws of the state. Listed below are some of the statutes relevant to employment and discrimination.

- | | |
|-----------|--|
| §95-28.1 | Prohibits discrimination against persons possessing sickle cell trait or hemoglobin C trait. |
| §95-28.1A | Prohibits discrimination against persons based on genetic testing or genetic information. |
| §95-28.2 | Prohibits discrimination against persons for lawful use of lawful products during non-working hours. |
| §95-80 | Prohibits membership in a labor organization as a condition of employment. |

- §95-81 Prohibits non-membership in a labor organization as a condition of employment.
- §95-241 Prohibits retaliatory action against an employee for filing a complaint or assisting in the investigation of a complaint of harassment or discrimination.
- §126-16 Provides equal opportunity for employment and compensation without regard to race, color, national origin, religion, sex, age, handicapping condition, or creed.
- §127B-10 Prohibits discrimination against persons who are members of the armed forces.
- §130A-148 Prohibits discrimination against employees with the AIDS virus or HIV infection.
- §143-422.2 Provides equal opportunity for employment and compensation in state departments, institutions, and commissions.
- §168A-2 The Persons with Disabilities Protection Act prohibits discrimination on the basis of a disabling condition.

Due Process

Procedural due process is a federal and state constitutional requirement when there is government action that affects a person's legal rights. The general concept is that higher levels of legal consequences require higher levels of due process.

In adjudicating claims of harassment or discrimination, the minimum due process afforded to a respondent is:

- the right to receive notice of the complaint, and
- the right to have an opportunity to be heard in response.

Both of these rights are built into the harassment resolution process.

A respondent does not necessarily have the right to have an attorney participate in the investigation or resolution processes, or the right to review evidence, or to cross-examine witnesses. Such rights may arise if the respondent chooses to appeal a decision from an administrator. If the appeal involves filings in judicial or quasi-judicial venues where the legal consequences of such action are more serious, greater standards of due process become available to the respondent.

Grievants, respondents, and administrators who have questions regarding due process rights are encouraged to call the OEO Director of Harassment Prevention Programs (513-1234), Human Resources (515-6575), or the Office of Legal Affairs (515-3071).

Retaliation

EEOC regulations as well as North Carolina state laws provide that it is unlawful to retaliate against someone who files a charge of harassment or discrimination, participates in an investigation, or opposes discriminatory practices. Individuals who believe they have suffered retaliation for their protected activities should contact the Office for Equal Opportunity or the EEOC. Even if an individual has previously filed a harassment or discrimination claim, a new charge may be filed based on retaliation.

At NC State University, all reasonable and appropriate actions are taken to ensure that the parties to a harassment/discrimination claim are protected from retaliation. The grievant, the respondent, witnesses, and those making statements on behalf of either the grievant or the respondent are protected from retaliatory measures resulting from their activities regarding the harassment resolution process. Protective measures may include lateral transfers in an employment or academic setting as well as reassigning employment and/or academic evaluations to an appropriate individual uninvolved with the harassment claim.

Confidentiality

Although confidentiality is important to the investigation and resolution of harassment claims, neither the OEO Director of Harassment Prevention Programs, Human Resources representatives, nor supervisors/administrators may completely guarantee confidentiality to either grievants or respondents. Situations in which the safety of an individual is threatened, or the behavior is extremely pervasive or abusive, or where other university policies are being violated, create an obligation for the supervisor/administrator, the OEO Director of Harassment Prevention Programs, or a Human Resources representative to act upon that information immediately. If at all possible, the identities of the parties are kept confidential in these situations.

A grievant, respondent, or third-party may choose to discuss their situation anonymously, usually for the purpose of gathering information. These discussions may remain confidential if the incident is described without disclosing any identifying information.

During an investigation, confidentiality of the grievant, respondent, and witnesses can only be maintained to a certain degree. Each party has certain rights and responsibilities regarding the investigation and resolution of any harassment claim, part of which includes the responsibility for maintaining confidentiality. Disclosure of the existence of a claim or the nature or details of the case to any individual not directly involved is prohibited. Failing this responsibility may complicate and possibly contaminate the thorough and effective investigation of the claim.

Federal and state laws, as well as university policies, govern the level of confidentiality applied to any documentation produced in relation to a harassment claim. Consult with the OEO Director of Harassment Prevention Programs, Human Resources, or the Office of Legal Affairs with any questions regarding confidentiality.

Policies and Regulations

All members of the campus community are responsible for understanding and complying with university policies and this section contains those policies and regulations related to harassment and discrimination.

There are a number of policies and procedures related to harassment and discrimination at NC State University. The role of all employees and students is to create and maintain a supportive and harassment-free working and learning environment for all members of the campus community.

Each member of the campus community is responsible for understanding and complying with harassment and discrimination policies as well as knowing where to obtain assistance for resolving concerns. Deans, unit heads, supervisors, and administrators have a higher level of responsibility because part of their duty involves responding promptly and appropriately to harassment and discrimination claims.










Policies, Regulations, and Memoranda

The university has a number of policies relating specifically to harassment. Most of our attention has focused on racial harassment and sexual harassment for the last few decades. This mirrors the activity in the courts, the private sector, and other institutions of higher education. Policies on racial harassment and sexual harassment have been in existence for a number of years and were both amended and issued by the Board of Trustees in 1998.

In the last several years, a number of cases in the state and federal courts have been litigated involving other issues, such as religious harassment and discrimination based on disability. Likewise, policies and guidelines issued by federal and state agencies have been extended to cover other forms of harassment. The university has also seen an increase in the number of complaints stemming from harassment based on characteristics such as national origin and

sexual orientation. Thus, the university has a number of Administrative Regulations, which have been issued under the authority of the chancellor, that better reflect the university's commitment to address these forms of discrimination and harassment. The original policies approved by the Board of Trustees regarding racial harassment and sexual harassment have been left intact to acknowledge the continuing importance of these two problems.

The following policies and regulations are included in this manual:

- 
Racial Harassment (POL 04.25.02)
http://www.ncsu.edu/policies/campus_environ/non-discrimination/POL04.25.2.php
- 
Sexual Harassment (POL 04.25.03)
http://www.ncsu.edu/policies/campus_environ/non-discrimination/POL04.25.3.php
- 
Interpersonal Relationships Among Faculty, Staff, and Students (POL 04.20.06)
http://www.ncsu.edu/policies/campus_environ/health_safety_welfare/POL04.20.6.php
- 
Grievance Procedure for Faculty and EPA Professionals (POL 05.25.01)
<http://www.ncsu.edu/policies/employment/grievance/POL05.25.1.php>
- 
Uniform Student Grievance Procedure (POL 11.40.01)
http://www.ncsu.edu/policies/student_services/student_griev/POL450.00.1.htm
- 
Equal Opportunity and Non-Discrimination Policy Statement (REG 04.25.01)
http://www.ncsu.edu/policies/campus_environ/non-discrimination/REG04.25.1.php
- 
Resolution Procedures for Harassment Complaints (REG 04.25.02)
http://www.ncsu.edu/policies/campus_environ/non-discrimination/REG04.25.2.php
- 
Sexual Orientation Policy Statement (REG 04.25.03)
http://www.ncsu.edu/policies/campus_environ/non-discrimination/REG04.25.3.php
- 
Unlawful Harassment Policy Statement (REG 04.25.04)
http://www.ncsu.edu/policies/campus_environ/non-discrimination/REG04.25.4.php

📁 **SPA Grievance and Appeal (REG 05.25.02)**

<http://www.ncsu.edu/policies/employment/grievance/REG05.25.2.php>

📁 **Affirmative Action Policy Statement (REG 05.55.01)**

<http://www.ncsu.edu/policies/employment/recruit/REG05.55.1.php>

📁 **Memorandum Regarding NC State University Computers and Pornography**

<http://www.ncsu.edu/policies/informationtechnology/Advice%20Memo%20on%20Public%20Computers%20and%20Pornography.doc>

Note:

Although not technically official policy, this memorandum addresses harassment, free speech, and policy concerns regarding acceptable use of university computers and restrictions regarding that use. Additional information regarding university computers may be found in the **Computer Use Policy** (POL 08.00.01) and the **Computer Use Regulation** (REG 08.00.02).

📁 **Computer Use Policy (POL 08.00.01)**

<http://www.ncsu.edu/policies/informationtechnology/POL08.00.01.php>

📁 **Computer Use Regulation (REG 08.00.02)**

<http://www.ncsu.edu/policies/informationtechnology/REG08.00.02.php>

Racial Harassment Policy (Pol 04.25.02)

Authority: Board of Trustees

History: First issued, February 11, 1989; Last revised, November 20, 1998.

Additional References: UNC Code: Appendix I.C (Personnel) and XII (Students).

Contact Info: Vice Provost for Equal Opportunity and Equity (919.515.4559)

1. Policy Statement

- 1.1. Racial bias or harassment is a form of race discrimination in violation of federal and state law and North Carolina State University policy, and it will not be tolerated. North Carolina State University will respond promptly to all complaints of racial harassment. Faculty, staff, and students should be aware that violation of this policy will lead to disciplinary action up to and including dismissal.
- 1.2. North Carolina State University hereby affirms its desire to maintain a work environment for all employees and an academic environment for all faculty and students that is free from all forms of harassment and discrimination. North Carolina State University wishes to maintain an environment which supports and rewards individuals on the basis of such relevant factors as academic ability and work performance.
- 1.3. Conduct or action that is based on a person's race or color creates a hostile environment that prevents effective learning or work performance, and it is in opposition to a campus environment free of harassment.

2. Procedures, Training, Education, and Prevention

The Board of Trustees hereby delegates to the Chancellor the authority to implement this policy and to establish necessary and appropriate procedures to achieve a harassment-free campus.

Sexual Harassment Policy (Pol 04.25.03)

Authority: Board of Trustees

History: First issued, September 18, 1992; Last Revised, November 20, 1998.

Additional References: UNC Code: Appendix I.C. (Personnel) and XII (Students).

Contact Info: Director of Harassment Prevention Programs (919-513-1234)

1. Policy Statement

- 1.1. Sexual harassment is a form of sex discrimination in violation of federal and state law and North Carolina State, University policy, and will not be tolerated. North Carolina State University will respond promptly to all complaints of sexual harassment. Faculty, staff, and students should be aware that violation of this policy will lead to serious disciplinary action up to and including dismissal.
- 1.2. North Carolina State University hereby affirms its desire to maintain a work environment for all employees and an academic environment for all faculty and students that is free from all forms of harassment and discrimination. North Carolina State University wishes to maintain an environment which supports and rewards individuals on the basis of such relevant factors as academic ability and work performance.
- 1.3. Conduct or action that either imposes a requirement of sexual cooperation as a condition of employment, employment decisions or academic advancement, or creates an intimidating environment that prevents effective learning or work performance, is in opposition to a campus environment free of harassment.

2. Definition

- 2.1. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:
 - 2.1.1 submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, employment decisions, academic advancement and/or receipt of a needed or legitimately requested University service, or
 - 2.1.2 submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting such individual in matters of employment, employment decisions, academic advancement or receipt of a needed or legitimately requested University service, or

2.1.3 such conduct has the intention or effect of unreasonably interfering with an individual's work or academic performance or of creating an intimidating, hostile or offensive working/learning environment.

2.2. Sexual harassment may involve persons of the opposite sex or persons of the same sex.

3. Procedures, Training, Education, and Prevention

The Board of Trustees hereby delegates to the Chancellor the authority to implement this policy and to establish necessary and appropriate procedures to achieve a harassment-free campus.

Interpersonal Relationships Among Faculty, Staff, and Students (Pol 04.20.06)

Authority: Board of Trustees

History: First issued, September 15, 1995; Last Revised, November 21, 1997.

Related Policies: Administrative Memorandum: 360 and UNC Administrative Manual, III-E-1.

Additional References: UNC Code: Appendix I.C.

Contact Info: Associate Vice Chancellor for Human Resources (919-515-3443)

1. Introduction

- 1.1. At the heart of the University experience is the interaction among faculty, staff and students. This institution's faculty, more than any of its other resources, make North Carolina State University a distinctive setting for the pursuit of academic and professional interests. Accordingly, faculty are encouraged to foster wholesome and appropriate relationships with colleagues, students, and staff at North Carolina State University.
- 1.2. Students and staff tend to hold the academic profession in high esteem and invest in relationships with faculty an extraordinary degree of trust and respect. Interactions among members of the academic community can and should be the occasion for enhancing freedom, demonstrating integrity, and encouraging mutual respect. Only by upholding high standards will University personnel be able to meet their collective obligation to each other.

2. Discrimination

Faculty are responsible for evaluating student progress toward educational goals on the basis of academic performance. Factors such as race, religion, sex, age, national origin, political affiliation, ethnic identity, life style, or other activities unrelated to academic achievement shall not be considered in making academic evaluations of students. Discrimination of a racial or sexual nature is a violation of Federal law and North Carolina State University policy.

3. Professional Relationships

- 3.1. It is important that significant contributions from students be duly acknowledged by the faculty. The guarantee of students' academic freedom rests upon the assurance that their ideas are their own and will be so acknowledged. While authorship prerogative will follow accepted norms in each discipline, it is

the obligation of the senior professional in all collaborative projects to communicate the basis for attribution to all participants at the beginning of the effort.

- 3.2. Any business relationship between a faculty/staff member and a student for whom he/she has supervisory or educational responsibility should be undertaken with due care. Both the fact and semblance of any exploitation must be avoided. Compensation in any professional relationship outside of the student-professor relationship should be commensurate with the individual's training and experience.

4. Personal Relationships

- 4.1. While close working relationships are encouraged among faculty, staff, and students, it is misconduct, subject to disciplinary action, for an individual to exercise direct supervisory, evaluation, instructional, and/or advising responsibilities, or participate in hiring, retention, promotion, or award decisions, for someone with whom there exists an amorous relationship or to whom they are related by blood, law or marriage. Both the fact and semblance of any exploitation must be avoided. The relative difference in power – actual or perceived – in working relationships must be recognized by faculty and staff and not be employed to anyone's advantage or disadvantage.
- 4.2. It is misconduct, subject to disciplinary action for a University employee to engage in sexual activity with any enrolled student of the institution, other than his or her spouse, who is a minor below the age of 18 years. Further, such sexual relationship can result in criminal liability.

5. Definition of Terms

- 5.1. "Amorous relationship." An amorous relationship exists when, without the benefit of marriage, two persons as consenting partners (a) have a sexual union or (b) engage in a romantic partnering or courtship that may or may not have been consummated sexually.
- 5.2. "Related by blood, law, or marriage" means:
- a. Parent and child
 - b. Brother and sister
 - c. Grandparent and grandchild
 - d. Aunt and/or uncle and niece and/or nephew
 - e. First cousins
 - f. Step-parent and step-child
 - g. Husband and wife

- h. Parents-in-law and children-in-law
- i. Brothers-in-law
- j. Guardian and ward

5.3 "Evaluate or supervise" means:

- a. To assess, determine or influence (1) one's academic performance, progress or potential or (2) one's entitlement to or eligibility for any institutionally conferred right, benefit or opportunity, or
- b. To oversee, manage or direct one's academic or other institutionally prescribed activities.

Grievance Procedure for Faculty and EPA Employees (Pol 05.25.1)

Grievance Procedure For Faculty Senior Academic Administrative Officers Tier II (SAAO Tier-II) and EPA Professional Employees

Authority: Board of Trustees

History: First issued, September 20, 1996. Last Revised, November 22, 2002.

Related Policies: UNC Code: Appendix I.C.

Additional References: Role of University Counsel in the Grievance Process, Definition of Personal Malice, UNC Policy Manual, Chapter III-I-15, Conducting Faculty/EPA Grievance Hearings: A Guide for Grievance Committees and Grievance Committee Chairs.

Contact for Info: Vice Chancellor and General Counsel (919-515-3071)

1. Purpose

- 1.1. The purpose of this grievance procedure is to provide an internal university process for the good faith resolution of employment grievances filed by faculty, SAAO Tier-II, and EPA professionals (hereinafter referred to as "covered employees"). North Carolina Cooperative Extension employees employed in county operations are excluded from this procedure and are governed by North Carolina Cooperative Extension Grievance Procedures for County Operations Employees.
- 1.2. Covered employees may also seek to resolve grievances and other disputes in accordance with the University Mediation Policy and Procedure. Mediation seeks to achieve a mutually agreeable settlement of differences; it differs from the Grievance Procedure in that it does not impose a decision on the parties. Mediation can be undertaken anytime the parties wish, regardless of the status of a grievance hearing or legal actions.
- 1.3. A grievance committee has no power to reverse an administrative decision, but can only recommend a reassessment of that decision if it finds that the decision was reached improperly.

2. Definition of Grievance and Scope of Grievance Procedure

2.1. In the context of the grievance procedure a grievance is defined as a formal complaint against an administrator alleging that a decision, which has adversely affected an individual employee's professional or academic capacity, has been reached improperly or unfairly. Improperly means in violation of a specific university rule, regulation, policy or practice pertaining to the employment relationship between the grievant and the university. Unfairly means in an arbitrary or capricious manner or in an unlawfully discriminatory manner.

2.2. This grievance procedure cannot be used for:

- a. dissatisfaction with the general application of a university or college policy challenged on the grounds that the policy itself is unfair or inadvisable;
- b. appeals from discharge, or the imposition of serious sanctions (suspension or demotion in rank) for faculty with academic tenure as defined in UNC Code section 603;
- c. appeals from terminations for faculty with academic tenure as defined in UNC Code section 605;
- d. complaints of harassment, since there is a separate procedure for them (administered by the Office for Equal Opportunity);
- e. non-renewal, non-reappointment, or non-extension of a contract upon expiration of an existing contract for anyone other than tenure-track faculty, SAAO Tier-II employees, and EPA professional employees.

2.3. Non-reappointment and Discontinuation of Tenure-track Faculty, SAAO Tier- II employees, and EPA Professional Employees.

2.3.1. A tenure-track faculty member who has been notified of a terminal appointment or non-reappointment has the right to have the case reviewed by a grievance committee only if, after discussions with the individual's department head and dean, the individual concludes that the decision not to reappoint was based upon one of the following:

- a. the employee's exercise of freedom-of-speech rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution;
- b. discrimination on the basis of race, sex, religion, age, disability, or national origin;
- c. personal malice as defined in section 100.3.5 of the UNC Policy Manual; or

- d. material procedural irregularities, meaning departures from prescribed procedures governing reappointment that cast substantial doubt on the validity of the decision not to reappoint.

The function of a grievance committee in these cases shall be limited solely to determining whether or not the non-reappointment decision was based upon any of the above impermissible reasons.

- 2.3.2.** A SAAO Tier-II employee and an EPA professional employee who has been notified of non-reappointment or discontinuation has the right to have the case reviewed by a grievance committee only if, after a discussion with the individual's supervisor, the individual concludes that the discontinuation or non-reappointment was based upon one of the impermissible grounds listed in section 5 of NCSU policy 22.01, "Employees Exempt from the State Personnel Act (EPA)".

3. Filing a Grievance

- 3.1.** A formal grievance may be filed only after the covered employee (hereinafter grievant) has attempted to resolve the grievance with his or her department head and dean without satisfactory results. After the grievant has discussed the decision to no avail with his or her department head and dean, the grievant should review all relevant material, including his or her personnel files. The grievant should then file a written request with the chair of the faculty that a grievance committee be formed to hear the grievance. The grievant should send copies of this request to all parties against whom the grievance is filed. This request must include the following
- a. the exact nature of the grievance;
 - b. the identity of all parties against whom the grievance is filed;
 - c. the redress sought; and
 - d. a statement that members of the grievance committee are designated as properly authorized agents who may examine documents submitted by the parties from the grievant's personnel files for the purpose of resolving the grievance.
- 3.2.** In non-reappointment cases, this request should be filed before termination of the grievant's employment, and in all cases the request should be filed within two months of the decision cited in the grievance. This filing deadline can be extended only if, in the judgment of the chair of the faculty, there are significant extenuating circumstances. In non-reappointment cases, the act of filing a grievance does not constitute grounds for extension of the contract.

4. Selection and Initial Convening of the Grievance Committee

- 4.1. Upon receipt of the written request for the formation of a grievance committee, the chair of the faculty shall convene the elected officers of the Faculty Senate for purposes of selecting a three member grievance committee and a grievance committee chair. (Procedures for selection of the grievance committee and grievance committee chair are set forth in Appendix A.) The chair of the faculty shall select and notify the grievance committee and grievance committee chair within two weeks following receipt of the grievant's written request. The chair of the faculty shall forward a copy of the grievance statement to the committee chair and committee members and promptly convene the committee for its initial meeting. Copies of the grievance procedure shall be provided to the grievance committee chair and each member of the grievance committee in advance of the initial meeting.
- 4.2. The chair of the faculty shall provide the provost and vice chancellor for Academic Affairs, and the Office of Legal Affairs with the grievance statement and the names of the grievance committee and grievance committee chair, following the formation of the committee.
- 4.3. At its initial meeting, the chair of the grievance committee with assistance of the chair of the faculty shall provide the members of the committee with an orientation covering the role and responsibilities of the committee and a review of the grievance process. After the orientation, the chair of the committee shall review the grievance statement and the committee shall determine whether the matter as stated is properly grievable or if the grievance should be dismissed for failure to state a properly grievable matter. Relevant considerations include, but are not limited to, the personnel status of the employee and the subject matter of the grievance (see paragraphs 2.1, 2.2, and 2.3. above), and the timeliness of the grievance (see section 3.2 above). If the matter is properly grievable, the committee chair should proceed to schedule a pre-hearing conference with the parties to the grievance. If it is not properly grievable, the committee may either:
 - a. allow the grievant to amend the grievance statement in the pre-hearing conference if this will enable the grievant to prepare a properly grievable claim; or
 - b. proceed to section 9 below by preparing a report that dismisses the grievance for reasons stated.

5. Pre-hearing Conference

- 5.1. The chair of the grievance committee shall promptly forward a copy of the grievance statement to the person(s) against whom the grievance is filed together with notice that they have two weeks within which to file a written

response. The chair shall convene a pre-hearing conference with all the parties one week after the committee and the grievant receive the response(s) to the grievance, or as soon as practicable thereafter. At this meeting, the committee will review the written response with the grievant and may request modification of the written grievance statement if such revision would clarify the exact nature of the grievance. The only topics that may be discussed at the pre-hearing conference are the exact nature of the grievance, the identity of all involved parties, the redress sought, the hearings procedures, and the rights regarding third-party observers. The chair shall prohibit the parties from providing evidence or arguing the merits of the grievance at the pre-hearing conference. The chair shall ensure that the parties are fully informed as to the nature of the grievance procedures and the parties shall be provided with a copy of this grievance procedure.

- 5.2. During the pre-hearing conference, the grievant is to inform the committee if the grievant wishes to have an observer present, and if so, to identify that person and state whether the observer is an attorney. The other parties may have one observer per party attend the hearing if, and only if, the grievant has elected to have an observer present. Should any of the other parties elect to have an observer present, their observers must be identified to the committee prior to the beginning of the hearing.

6. Attorneys and Observers

- 6.1. Although active participation by legal counsel during the pre-hearing conference and the grievance hearing is not allowed, the grievant is entitled to have one third-party observer of the grievant's choice present. A third-party observer may be an attorney; however, the attorney, like other observers, may not participate actively in the hearing process.
- 6.2. The NCSU Office of Legal Affairs may provide an attorney to advise and act as an observer for parties who are responding to a grievance if the grievant has an observer who is an attorney. The Office of Legal Affairs may also designate an attorney to provide procedural advice to the committee upon request. Any attorney who assists the committee may not discuss the merits of the case with any party, observer, or other attorney and shall not act as an advocate for or against any party when advising the committee on procedure.
- 6.3. Any attorney from the NCSU Office of Legal Affairs who advises a party on the merits of the grievance may not advise the Chancellor or Board of Trustees on any appeal of that grievance. Any attorney from the NCSU Office of Legal Affairs who advises the grievance committee on procedures may advise the Chancellor and/or Board of Trustees on any appeal of that grievance.

7. Grievance Hearings - Timing and Information Exchange

- 7.1. Only if the committee chair is aware of significant extenuating circumstances shall the opening date of the hearings be delayed beyond four weeks from the pre-hearing conference. The chair shall notify the grievant and all other parties in writing of the dates and location of the hearings.
- 7.2. The committee chair may require the parties to exchange witness lists and copies of exhibits the parties wish to introduce as evidence, and the committee chair may specify that the exchange occur a certain number of days in advance of the hearing. If a party wishes to introduce exhibits at the hearing that were not included in a pre-hearing exchange, the committee chair shall decide whether there is a good reason for accepting such evidence. Any pre-hearing exchange of proposed exhibits shall be between the parties only, and in no case should evidence be provided to the committee prior to the hearing. Exhibits must be numbered sequentially and identified by party; e.g., Grievant's Exhibit No. 1, Department Head Exhibit No. 3, or Committee Exhibit No. 5. The exhibit numbers should be written on the exhibits, and pages numbered, at the time they are first presented to the committee. References to documents during the hearing should be by exhibit number with page references as applicable.

8. Guidelines for the Conduct of Grievance Hearings

- 8.1. All meetings constituting the grievance hearing shall be conducted in accordance with the following guidelines:
 - 8.1.1. Notices of Meetings

The chair of the grievance committee shall send notices of the scheduled meetings to all participants in that meeting and to the Office of Legal Affairs. The chair must notify all parties and the Office of Legal Affairs of any amendment to the grievance.
 - 8.1.2. Committee Participation

Hearings shall be conducted with the chair and all three committee members present. If the committee is unable to timely convene and hear the grievance or is not functioning effectively, any committee member or party to the proceeding may ask the chair of the faculty to disband the committee or replace members who are delaying or otherwise obstructing the committee's progress. The chair of the faculty shall have the discretion to make any changes to the committee, including the committee chair, that are necessary to have it function effectively. The request to disband or replace, and the decision of the chair of the faculty in response, must be in writing and be included in the Official Record.

8.1.3. Control of Hearings

The chair of the grievance committee shall exercise complete control over all stages of the hearings, and over pre-hearing matters. Consistent with the principles of impartiality and equity, the committee chair shall determine, among other things:

- a. the order of testimony presentation;
- b. what additional information or documentation, if any, should be requested;
- c. the order of and procedure for questioning the parties and witnesses;
- d. the admissibility of all questions, evidence and compliance with procedures; and
- e. who may be allowed to be present at any hearing. With the exception of persons specifically designated as third-party observers, grievance hearings are not open to spectators.

8.1.4. Relevance of Evidence

The strict rules of legal evidence do not apply and the chair of the committee may admit any information determined to be pertinent and the committee shall have access to any available information relevant to the case. If any hearsay evidence is to be admitted, however, the source of that information must be revealed so that the person(s) can be requested to appear before the committee for questioning. The committee chair shall determine whether information or testimony is material and relevant to the issues involved in the grievance and may rule that certain presentations not be considered. All materials submitted as evidence, including any written documents, photographs, audio recordings, and video-materials, shall be retained by the committee until its final report is complete, at which time both the evidence and material excluded from evidence shall be incorporated into the Official Record and forwarded to the chancellor along with the final report. If material is excluded from evidence, the chair shall make a record of the reasons.

8.1.5. Testimony

Parties shall have the right to testify, to present testimony of witnesses and other evidence, to hear and question witnesses, and to examine all documents and other information considered by the committee. If a witness cannot or will not appear, and the committee chair determines that testimony of the witness should be admitted into evidence, the committee chair shall identify the

witness, disclose the statement of the witness, and if possible provide for questions.

So long as it does not substantially delay the hearing process, the committee chair may, at his or her discretion, call a recess so that reasonable time is provided for the examination of all evidence and for the preparation of appropriate responses.

8.1.6. Order of Presentation

In the standard order of presentation, the grievant makes an opening statement, then the respondent(s) makes an opening statement if desired. Next the grievant should present his or her case through the grievant's own testimony, exhibits, and witnesses. If the committee decides that the grievant's evidence, if taken as entirely true, is insufficient to state a grievable matter justifying remedial action, then the committee shall proceed to dismiss the grievance. If the committee decides that the grievant's evidence is sufficient to state a grievable matter justifying remedial action, then the committee chair will ask the respondent(s) to present evidence through testimony of parties, exhibits, and witnesses. Following each party's and witness's testimony, the committee chair should allow questions from the other parties. The committee members may ask questions of the parties and witnesses at any time. After all evidence has been presented, the grievant may make a closing statement, followed by the respondent(s), and a last statement by the grievant. The committee chair should set a time limit for opening and closing statements, and should prohibit the discussion of any new information in closing statements. The order of presentation may be modified in the committee chair's discretion so long as each party gets an opportunity to testify and ask questions of other parties and witnesses.

8.1.7. Questioning of Witnesses

The committee chair shall have the prerogative to determine the appropriateness of all questions and the method of questioning. The committee chair should not allow any questioning that is irrelevant, immaterial, unduly repetitious, or abusive.

8.1.8. Confidentiality

Members of the grievance committee, parties and witnesses shall maintain strict confidence concerning all aspects of the grievance process. This is generally required by state law as well as university policy. Any breach of confidentiality, which in the judgment of the committee compromises or substantially affects the process, may

result in a committee decision to terminate the grievance process. In this event, the committee shall advise the chancellor and chair of the faculty as to whether or not another grievance committee should be formed to hear the case. Access to material placed in evidence and to any records of the proceedings shall be strictly limited for the duration of the hearings procedure to members of the committee, persons who have a need to know as part of the process (witnesses, observers, etc.) and the parties.

8.1.9. Hearings Records

The chair of the committee shall tape record, or arrange to record through a court reporter, all hearings and maintain such other written records as it considers appropriate. No other tape recordings of the hearings will be allowed. At any stage prior to submission of the Official Record to the Office of the Chancellor, any party shall be granted, under supervision of the committee chair, access to the tapes and other committee records. After the Official Record is delivered to the chancellor, access shall be determined in accordance with state personnel records law. Once the Official Record has been delivered to the Office of the Chancellor, or a grievance terminated, committee members may destroy extra copies of records, but any original or unique records, including personal notes of committee members, must be retained in accordance with state public records law and sent to the Faculty Senate office promptly.

8.1.10. Withdrawal of Grievance

At any time prior to submission of the committee's final report, the grievant shall have the right to withdraw the grievance by submitting a written request to the committee chair. Receipt of this request shall cancel the proceedings, and the Official Record of the hearing shall consist only of the following

- a.** names of committee members and its chair;
- b.** date committee was formed;
- c.** dates of pre-hearing conference and any grievance hearings;
- d.** date of withdrawal;
- e.** the withdrawal request; and
- f.** grievance statement.

The committee chair shall promptly transmit the Official Record and all other documents to the chair of the faculty, who shall in turn discharge the committee.

8.1.11. Amendment of Grievance

Once the grievance hearings begin, the grievant shall not have the right to amend the grievance without the unanimous vote of the committee. If any amendment to the grievance is allowed, the committee chair must promptly notify all parties of this action and defer subsequent proceedings until the other parties have had the opportunity to respond to this revision. A respondent shall have two weeks to respond to any amended grievance.

8.1.12. Prompt Action

The committee shall attempt to complete its task within six weeks after the first hearing, excluding the initial meeting of the committee and the pre-hearing conference.

9. Deliberations and Report of the Grievance Committee

- 9.1.** Upon the conclusion of the grievance hearing, the grievance committee shall deliberate and decide whether to sustain all or any part of the grievance. The chair of the committee shall be present during the committee's deliberations and may instruct the committee regarding its jurisdiction and other grievance related matters. The chair may participate in the discussions but may not vote, veto the decision of the committee, or write the committee's report.
- 9.2.** The grievance committee shall prepare a written report of its findings and recommendations based solely on material presented in the hearings. The report should state a separate finding for each particular issue of the grievance, make findings that resolve the material issues of fact that have been disputed, and recommend action(s) for the chancellor to take. The committee should be careful not to simply substitute its judgment for that of the respondent(s) (e.g., the committee should not recommend that the grievant get tenure or a raise simply because the grievant's professional record could have justified a tenure appointment, or a greater pay raise). Rather, the committee should decide if the decision being grieved was reached for improper or unfair reasons (e.g., was it based on irrelevant factors such as age or race or political views, or were personnel procedures violated to the prejudice of the grievant). Except in non-reappointment cases, the committee may recommend a compromise solution not advanced by any party. The report shall include any minority views of committee members, and shall note the intent of any committee member to file a separate report. Failure of the committee to note such intent shall not prohibit any committee member from filing a separate report.
- 9.3.** The chair of the committee shall send the committee's report, together with the Official Record of the grievance, to the chancellor. Copies of the report shall be sent to the parties and to the chair of the faculty.

- 9.4. The committee may write a separate report to the chair of the faculty and the chancellor recommending any changes within the university that might prevent similar grievances in the future, or any proposed improvements in the grievance procedure, including additional circumstances under which it would be appropriate to hear non- reappointment grievances.

10. Response of The Chancellor to The Report of The Committee

The chancellor may accept or reject within sixty days any or all findings and recommendations of the grievance committee, may remand the matter to the committee for further consideration of the grievance or may seek clarifying information from the committee. In considering the committee's report, the chancellor may, with proper respect for confidential matters, share parts of the report with appropriate administrators (other than parties or witnesses) for their advice. If the chancellor's decision rejects any of the findings or recommendations of the committee, the chancellor shall notify the committee members in writing, with copies to the parties and to the chair of the faculty, giving his/her specific reasons for not accepting the committee's findings or recommendations. The chancellor shall provide the opportunity for the committee and parties to respond to the chancellor's decision. The chancellor shall notify the grievant of the final decision by registered return-receipt mail. Copies of the decision shall be sent to the respondent, the grievance committee and the chair of the faculty.

11. Official Record

- 11.1. The Official Record of a grievance hearing shall consist of all correspondence pertaining to the grievance and every item, piece of information, document and exhibit that was either submitted to or given consideration by the committee, along with the tape or court reporter's transcript of the hearing. All information relevant to the committee's procedural rulings, factual findings, recommendations, and any other aspects of its final report should be included in the Official Record.
- 11.2. If the committee decided that certain information offered by a party or witnesses should be excluded from consideration, the decision to exclude should be recorded for the record and the excluded information should be kept as part of the Official Record but segregated from the information that was accepted as evidence.
- 11.3. The Official Record should include a table of contents so that every document and record can be easily identified and located. The Official Record should be forwarded to the chancellor along with the committee's final report.

12. Discharge of Grievance Committee

Upon receipt of the chancellor's final decision, the grievance committee will have completed its work and shall be officially discharged in writing by the chancellor.

13. Appeals from the Decision of the Chancellor

Within ten calendar days (see below), appeals from final decisions of the chancellor may be made, consistent with provisions of section 501 C (4) of The Code, to the appropriate appellate body as follows:

13.1. Board of Trustees and thereafter to the Board of Governors:

- a. grievances concerning appointment, promotion, and compensation by a non-tenured faculty member or EPA professional employee;
- b. other grievances that derive from or that are controlled by policies, rules or regulations of the Board of Trustees.

13.2. President and thereafter to the Board of Governors:

- a. grievances concerning appointment, promotion, and compensation by a tenured faculty member or senior administrative official;
- b. other grievances that do not derive from or that are not controlled by policies, rules or regulations of the Board of Trustees.

14. Time Limits on Appeals

The grievant must file a written notice of appeal from decision of the chancellor to the appropriate appellate body, with a copy to the chancellor, within ten calendar days of the grievant's receipt of the chancellor's final decision by registered return-receipt mail.

14.1. Board of Trustees and thereafter to Board of Governors:

If the Board of Trustees agrees to consider the appeal, it will do so on a schedule established by the chancellor, subject to any instructions received from the Board or from a committee of the Board which has jurisdiction of the subject matter of the grievance. The Board will issue its decision within 120 days after receipt of the notice of appeal; provided, that if the grievant fails to comply with the schedule established for perfecting and processing the appeal and thereby precludes a decision within 120 days, the Board in its discretion, may extend the decision period or dismiss the appeal. A grievant dissatisfied with a decision of the Board of Trustees must file written notice of appeal with the Board of Governors, by submitting such notice to the president, within ten days after the grievant's receipt of the decision by registered return-receipt mail. If the Board agrees to consider the appeal, it will do so on a schedule established by the president, subject to any instructions received from the committee of the Board which has jurisdiction of the subject matter of the grievance. The Board will issue its decision within ninety days after receipt of the notice of appeal; provided, that if the grievant fails to comply with the schedule established for perfecting and processing the appeal and thereby precludes a decision within

ninety days, the Board in its discretion, may extend the decision period or dismiss the appeal.

14.2. President and thereafter to Board of Governors:

The schedule for submission of relevant documents, perfecting, and processing the appeal shall be established by the president. The president will issue the decision within sixty days after receipt of the notice of appeal; provided, that if the grievant fails to comply with the schedule established for perfecting and processing the appeal and thereby precludes a decision within sixty days, the president has the discretion to extend the decision period or dismiss the appeal. A grievant dissatisfied with the president's disposition of the appeal must file written notice of appeal with the Board of Governors, by submitting such notice to the president, within ten days after the grievant's receipt of the decision by registered return-mail. If the Board agrees to consider the appeal, it will do so on a schedule established by the president, subject to any instructions received from the committee of the Board which has jurisdiction of the subject matter of the grievance. The Board will issue its decision within ninety days after receipt of the notice of appeal; provided, that if the grievant fails to comply with the schedule established for perfecting and processing the appeal and thereby precludes a decision within ninety days, the Board in its discretion, may extend the decision period or dismiss the appeal.

15. Grievance Report of the Chair of the Faculty Senate; Recommendations for Improvements

The chair of the faculty shall make an annual report to the faculty senate concerning the grievance process. This report shall summarize, without disclosing specific details, the types of grievances considered, findings by categories, and final administrative decisions. As necessary, the chair of the faculty shall convene a meeting of the Faculty Senate Personnel Policy Committee and the Faculty Grievance Panel for the purpose of considering any revisions in the grievance procedure for faculty, SAAO Tier-II employees, and EPA professional employees that could improve the grievance process. Any proposed changes in the procedure must be approved by the faculty senate and the chancellor.

APPENDIX A**Procedures for Selection of Grievance Committees and
Grievance Committee Chairs****1. Composition of Grievance Panel**

- 1.1.** A grievance panel from which potential grievance hearing committees are to be selected shall be constituted as follows:

Each college annually elects a number of faculty to serve on the panel; the number from each college is equal to at least one-half of the number of senators from the college, rounded up when necessary, plus two. The chair of the faculty may increase the size of the panel, on a proportional basis, if a large pool of members is needed to meet the demand. Each college elects one panel member from the rank of professor and tenured associate professor, one from the rank of untenured associate professor, and one from the combined ranks of assistant professor, instructor, lecturer and others with equivalent rank, with the rank being that rank held at the time of the election. Those colleges with more than three panel members elect the additional members without restriction as to academic rank. These additional members will be those remaining on the final ballot with the highest number of votes without regard to position title. The same people eligible to vote in the faculty senate elections are eligible to vote for members of the panel. Eligibility for membership on that panel is the same as for serving on the faculty senate except that department heads may not be elected to panels.

- 1.2.** Members of the panel are elected by the faculty of each college for two-year terms. They are available for immediate re-election once. After having served for two terms, they become eligible again after the passage of two more years. Elections are held annually and terms of members are staggered whenever possible. The timing and procedures of elections coincide with those of the Faculty Senate elections.

2. Selection of Grievance Committee Members

- 2.1.** The chair of the faculty shall convene the elected officers of the Faculty Senate for the purpose of selecting members of a grievance committee from the pool of faculty and non-faculty EPA employees elected to the grievance panel. Members of the committee are to be selected as follows:

2.1.1. Prospective Members

Names of all grievance panel members are drawn at random and recorded in the order drawn so as to compose four lists of names:

- a.** panel members from the grievant's college or constituency;

- b. tenured professors and tenured associate professors from other colleges; and
- c. untenured professors and associate professors, assistant professors, instructors, lecturers, and non-faculty EPA employees, from other colleges.

Except when the grievant is from the general constituency, names of general constituency members are allocated at random to lists b, and c. Prospective grievance committee members shall consist of all persons in list a and the first five persons in lists b and c.

2.1.2. Challenges

The chair of the faculty shall meet or consult separately with each party and allow each the opportunity to remove, without cause, one prospective member from each of the three groups. The grievant shall be afforded the last opportunity to challenge prospective members. At the same time as the opportunity to remove without cause, each party may also request in writing that prospective member(s) be removed for cause. The request should specify the cause. The chair of the faculty shall make the decision whether to disqualify for cause, and that decision along with the written request will be made a part of the Official Record. The chair may also disqualify a prospective member for cause, based on written reasons, without a request from a party.

2.1.3. Disqualifications

After the challenge process is complete, the chair of the faculty shall contact the first remaining prospective committee member on each list.

The chair shall inform them of the names of the parties and the nature of the grievance and ask if they have any reason to disqualify themselves. When persons disqualify themselves, the chair of the faculty shall contact additional persons in order from each list until four members willing to serve are identified. In the event that all prospective members from any of the lists disqualify themselves, the chair shall select an eligible person who is willing to serve from that constituency. If the chair of the faculty has reason to disqualify himself or herself from making this selection, the responsibility will be assumed by the chair-elect or secretary of the faculty senate.

2.1.4. Formation of Committee

A three-member grievance committee shall be formed by selecting one member from each of the identified groups after challenges and disqualifications. In the event of disqualification, additional names

are drawn until a member willing to serve is identified. The chair of the faculty shall provide the provost and vice chancellor, and the Office of Legal Affairs with a statement of the grievance and the grievance committee membership.

3. Selection of Grievance Committee Chair Panel

- 3.1.** The faculty senate shall elect a panel of 5 individuals to serve as the presiding officers (Chairs) for individual grievance committees formed to hear grievances. Persons eligible for election to the panel of chairs are selected first from among those who have served on a minimum of three grievance committees and have received training in the grievance procedures. If the number is short of five (5), then they are selected from among those who have been trained in the grievance procedures. Each member of the chair panel shall serve a five-year term. Initial appointments shall be staggered so as to result in an annual appointment of one panel member each year after the first panel is appointed.
- 3.2.** The chair of the faculty shall make sure that there is sufficient supply of trainees to satisfy the requirements stated in section 3.1. Recognizing that non-faculty EPA employees should be represented on the grievance committees that deal with non-faculty EPA employee grievances, the faculty chair should see to it that enough non-faculty EPA employees receive training, or at least participate in the grievance proceedings, to gain sufficient experience to be eligible to serve on grievance committees as either members or as chairs. The number of non-faculty EPA employees thus trained shall not be less than two. To facilitate the implementation of this requirement, election to the grievance panel (see section 3.1 above) by the colleges should include non-faculty EPA employees. Membership by non-faculty EPA employees in the grievance panel shall be rotated among the colleges.
- 3.3.** The chair of the faculty shall select from the panel a grievance committee chair to preside over each grievance for which the chair has received a request for the appointment of a grievance committee. The chair of the faculty shall provide each chair with the opportunity to disclose any potential conflicts of interest that may preclude the chair from presiding over any particular grievance and shall provide each party to the grievance with the opportunity to challenge any potential chair for cause. The grievance committee chair shall have the responsibility for presiding over the grievance, addressing all procedural matters pertaining to the grievance, transmitting the committee's findings and recommendations and the Official Record of the grievance to the chancellor, and attending to the time deadlines set forth in the grievance procedure.

- 3.4. The panel of chairs will receive an annual orientation to the university's grievance process and will be required to participate in periodic training sessions that will be developed by the faculty senate and the university general counsel. Training will include the role and responsibilities of grievance committee members and grievance committee chairs, general rules regarding the conduct of grievance hearings, responding to various procedural issues, dealing with conflicts of interest and the duty to recuse when conflicts are present, how to effectively organize the evidentiary record and compile the official grievance record, and what to include in the committee report and recommendations.

Uniform Student Grievance Procedure (Pol 11.40.01)

Authority: Board of Trustees

History: First issued April 17, 1997.

Related Policies: Board of Trustee Policy - The Code of Student Conduct and Administrative Regulation - Grievance Procedure for Students.

Additional References: UNC Code, Section 501 C (4); Appendix XII.

1. North Carolina State University would benefit from a single University-wide grievance procedure for students, other educational program participants, and applicants for admission.
2. In consultation with student government, the Chancellor and his designees are hereby delegated the authority to write and implement a single University-wide procedure for students. That procedure shall include the following elements:
 - 2.1. Grievances shall be permitted on all subject matters specified by law and University of North Carolina policy, and such additional matters as the Chancellor determines are appropriate.
 - 2.2. All parties to a grievance shall be given advance notice of hearing dates, times, and places. All parties shall be given a copy of the written grievance and any written response prior to hearing.
 - 2.3. Grievants shall be entitled to present witnesses, proffer documentary evidence, and question opposing witnesses. Grievants may be accompanied by an observer.
 - 2.4. Hearings shall be conducted by impartial panels composed of at least 50% student membership. The hearing panel recommendations and the decisions of administrators shall be based solely on the evidence from the hearing.
 - 2.5. Grievants shall have appeal rights consistent with Board of Governors policy.

Equal Opportunity and Non-Discrimination Policy Statement (Reg 04.25.01)

Authority: Issued by the Chancellor. Changes or exceptions to administrative regulations issued by the Chancellor may only be made by the Chancellor.

History: First issued, August 30, 1999. Endorsed by the University Council on August 9, 1999. Amendments endorsed by the University Council on August 21, 2000.

Related Policies: Board of Trustees Policy – Grievance Procedure for Faculty and EPA Professional Employees; Board of Trustees Policy – Code of Student Conduct; Board of Trustees Policy – Uniform Student Grievance Procedures; Administrative Regulation – Resolution Procedures for Harassment Complaints; SPA Grievance and Appeals Procedures.

Additional References: Human Resources, Policies and Procedures Manual – Non-Discrimination Appendix.

Contact Info: Vice Provost for Equal Opportunity and Equity (919-515-4559)

I. Policy Statement

- A. It is the policy of the State of North Carolina to provide equality of opportunity in education and employment for all students and employees. Accordingly, the university does not practice or condone unlawful discrimination in any form against students, employees or applicants on the grounds of race, color, religion, creed, sex, national origin, age, disability, or veteran status.
- B. Discrimination based upon race, color, religion, sex, national origin, age, disability, or veteran status is in violation of federal and state law and North Carolina State University policy, and will not be tolerated.
- C. Retaliation against any person complaining of discrimination is in violation of federal and state law and North Carolina State University policy, and will not be tolerated.
- D. North Carolina State University will respond promptly to all complaints of discrimination and retaliation. Violation of this policy can result in serious disciplinary action up to and including expulsion for students or discharge for employees.

- E. Disciplinary action for violations of this policy will be the responsibility of the dean or director, supervisor, or Office of Student Conduct as may be appropriate in accordance with applicable procedures.
- F. North Carolina State University hereby affirms its desire to maintain a work environment for all employees and an academic environment for all faculty and students that is free from all forms of unlawful discrimination and free from discrimination which is otherwise prohibited by university policy or regulation. Unlawful discrimination is completely incompatible with the values and goals of North Carolina State University and will not be tolerated. North Carolina State University strives to maintain an environment that supports and rewards individuals on the basis of such relevant factors as ability, merit and performance.

II. Definitions

- A. Discrimination is unequal and unlawful treatment based upon race, color, religion, sex, national origin, age, disability, or veteran status.
- B. Retaliation is conduct causing any interference, coercion, restraint or reprisal against a person complaining of discrimination or participating in the resolution of a complaint of discrimination.
- C. Harassment is a form of discrimination. See separate policy on Unlawful Harassment (Administrative Regulation No. 04.25.4) and Resolution Procedures for Harassment Complaints (Administrative Regulation No. 04.25.2).

III. Violations of Policy

Any individual with a concern, grievance or complaint of discrimination or retaliation should utilize the procedures available under the Code of Student Conduct, the SPA Grievance and Appeals Procedures, or the Grievance Procedure for Faculty and EPA Professional Employees.

Resolution Procedures for Harassment Complaints (Reg 04.25.02)

Authority: Issued by the Chancellor. Changes or exceptions to administrative regulations issued by the Chancellor may only be made by the Chancellor.

History: First issued, August 30, 1999. Last Revised, November 18, 2002.

Related Policies: Board of Governors' interpretation of term "personal malice" used in UNC Code Section 604B, issued March 9, 1990; Board of Trustees Policy – Grievance Procedure for Faculty and EPA Professional Employees; Board of Trustees Policy – Racial Harassment; Board of Trustees Policy – Sexual Harassment; Board of Trustees Policy – Code of Student Conduct; Board of Trustees Policy – Uniform Student Grievance Procedures; Administrative Regulation – Unlawful Harassment Policy Statement; Administrative Regulation – Sexual Orientation Policy Statement.

Contact Info: Vice Provost for Equal Opportunity and Equity (919-515-4559)

I. What May Be Grieved

These procedures are to be used to resolve complaints of harassment based upon race, color, religion, creed, sex, national origin, age, disability, veteran status or sexual orientation.

II. Who May Grieve

A. Employees of North Carolina State University, including

1. full-time or part-time employees;
2. permanent, time-limited, probationary, trainee or temporary employees;
3. SPA or EPA employees;
4. students employed by the university.

B. Students of North Carolina State University, including

1. full-time or part-time students;
2. undergraduate, graduate or Life Long Education students.

C. Other individuals visiting or affiliated with North Carolina State University.

III. Other Remedies

- A. The existence of this procedure does not bar individuals from also filing claims simultaneously under Title VII (Civil Rights Act of 1964) with the Equal Employment Opportunity Commission and under Title IX (Education Amendments of 1972) with the Office for Civil Rights of the Department of Education.
- B. SPA employees with a grievance concerning discrimination or retaliation may appeal directly to the Office of Administrative Hearings of the State Personnel Commission.

IV. Informal Resolution

- A. Students with a concern regarding harassment may contact an academic advisor, university administrator, or the Office for Equal Opportunity for assistance.
- B. Employees and others with a concern regarding harassment may contact their supervisor or other appropriate university administrator, Human Resources or OEO for assistance.
- C. Additionally, any individual – students, staff, faculty, administrators, and others – may consult with a Harassment Resolution Officer (HRO) for information and assistance regarding options available for resolving complaints.
- D. Complaints of harassment may be resolved through a variety of informal options, including but not limited to the following:
 1. The affected party may confront the alleged harasser in person regarding the conduct, with or without the assistance of a supervisor (for employees), representatives from Human Resources (for employees), a representative from OEO (for employees, students and others), an advisor (for students) or an HRO (for employees, students and others).
 2. The affected party may confront the alleged harasser in writing regarding the conduct, with or without the assistance of a supervisor, advisor, Human Resources, OEO, or HRO.
 3. The affected party may ask a supervisor, advisor, Human Resources, OEO, or HRO to notify the alleged harasser of the concern.
 4. The affected party may ask a supervisor, advisor, HRO Human Resources or OEO to mediate between the parties.
 5. The affected party may seek assistance through the University Mediation Program.
 6. Administrators and supervisors may explore and resolve any informal complaints.

V. Formal Resolution: Student Respondents

Complaints against students, which cannot be informally resolved, may be presented as a formal charge through the Office of Student Conduct, or may be presented to OEO as a signed complaint. The Office of Student Conduct may refer harassment charges it receives to OEO for investigation before the Office of Student Conduct decides if a disciplinary proceeding is warranted.

VI. Formal Resolution: All Other Cases

- A. SPA employees who have a complaint of harassment may use the formal grievance procedure administered by Human Resources. (See the section on Unlawful Workplace Harassment in the Human Resources Manual, Policy #1202, located on the Web at <http://www2.acs.ncsu.edu/hr/docs/grievance.doc>). This is the required procedure for SPA complainants who want to maintain their appeal rights through the Office of Administrative Hearings of the State Personnel Commission. To use this procedure, the SPA employee must submit a written complaint to Human Resources within 30 calendar days of the alleged harassment.
- B. SPA employees who do not submit a written complaint to Human Resources within 30 days may still utilize the informal processes described in Section IV for resolving their concern; however, such individuals will not have the option of later appealing to the Office of Administrative Hearings of the State Personnel Commission or using any University appeal procedures.
- C. All other employees (non-SPA) who seek formal resolution normally should file their harassment complaints with OEO (unless the complaint is against OEO, in which case it may be filed with the Chancellor's office). Any complaints filed directly with Human Resources must be coordinated with OEO. Complaints may also be presented to a unit head (Department head, director or higher), or to other university officials who shall forward the complaints to OEO. Complaints seeking formal resolution must be filed within 30 days of the alleged harassment. Occasionally, circumstances may exist that delay a student or employee from bringing forth a complaint within 30 days; the reasons for the delay in reporting these allegations must be shared with OEO, and OEO may extend the time limit based on extenuating circumstances and at its sole discretion.
- D. Formal resolution begins with a signed written complaint. However, the university may be legally obligated to investigate absent a signed complaint when there is notice that harassment may be occurring.
- E. OEO or HR, as applicable, will investigate each formal complaint and prepare a report of its findings, unless the Chancellor specifies otherwise. The report will be given to the unit head. "Unit head" means deans in the case of non-

SPA employees working in the colleges, it means the supervisor of the alleged harasser in the case of non-SPA employees outside of colleges, and it means department head or director for SPA employees.

1. The unit head will determine if discipline or other action is appropriate after reviewing the OEO report and any additional information the unit head considers relevant.
2. The unit head will inform the complainant in writing that a decision has been made, whether or not harassment was found, and that appropriate action is being taken, if harassment is found. Complainants will not be told what disciplinary action, if any, is being taken. Complainants may be told results that directly affect them, results that do not involve personnel file information, and whether the complaint was substantiated. Unit heads must prepare a memorandum for the department files that states that release of the foregoing information to the complainant is "essential to maintaining the integrity of such department or to maintaining the level or quality of services provided by such department."

VII. Confidentiality

All complaints and proceedings will be subject to the University's legal obligations to assure resolution and will be kept confidential to the extent permitted by law. Information about harassment complaints may be shared where necessary to investigate, prevent or remedy harassment.

VIII. Appeal Routes

- A. Any SPA employee who is not satisfied with the formal resolution of a complaint of harassment may appeal directly to the Office of Administrative Hearings of the State Personnel Commission, if the original complaint of harassment was submitted in writing to Human Resources within 30 calendar days of the alleged harassing action. The university has 60 calendar days from receipt of the written complaint to take appropriate remedial action, after which time the employee has 30 calendar days to appeal directly to the Office of Administrative Hearings.
- B. Complainants other than SPA employees (i.e., students and EPA employees) who are not satisfied after the formal resolution by a unit head or the office of student conduct ("OSC") may appeal as follows:
 1. A complainant may appeal on the grounds that the administrator's decision has not stopped ongoing harassment, or that it does not remedy present effects of past harassment, that directly and adversely affect the complainant. The complainant must show on appeal that his or her rights under university policy or state or law continue to be violated after the administrator's decision. (For example, if a professor gave a low grade to harass a student because of racial animosity, and the unit head's decision

did not correct the grade or provide a fair alternative grading mechanism, the student complainant could appeal the unit head's lack of effective remedial action.) Dissatisfaction with the university's action or lack of action is not by itself grounds for appeal.

2. A written appeal statement must be filed with the Vice Chancellor who has ultimate oversight for the decision.
3. Appeal statements must be filed within 30 days of the date that notice of the administrator's written decision is sent to the complainant.
4. Appeal statements must include a copy of the original complaint, a summary of previous efforts to resolve the harassment (including a list of university personnel that the complainant has contacted for assistance), and a description of how the complainant's rights continue to be violated.
5. The Vice Chancellor, or designee, who reviews the appeal may solicit a response from the administrator who made the initial decision, will review the OEO report, and may review other information relevant to the appeal.
6. The Vice Chancellor will provide the complainant with a written decision on appeal, either hand-delivered or sent certified return receipt mail. This will be the final decision at the institutional level. Any further appeal rights will be governed by policies of the University of North Carolina and by federal or state law.

Sexual Orientation Policy Statement (Reg 04.25.03)

Authority: Issued by the Chancellor. Changes or exceptions to administrative regulations issued by the Chancellor may only be made by the Chancellor.

History: First issued, April 29, 1991. Reissued on October 31, 1996. Amended February 19, 1999. Reformatted regulation endorsed by the University Council on August 9, 1999. Amendment issued by the Chancellor on August 30, 1999. Amended May 30, 2003.

Related Policies: Board of Governors' interpretation of term "personal malice" used in UNC Code Section 604B, issued March 9, 1990; Board of Trustees Policy – Grievance Procedure for Faculty and EPA Professional Employees; Board of Trustees Policy – Code of Student Conduct; Board of Trustees Policy – Uniform Student Grievance Procedures; Administrative Regulation – Resolution Procedures for Harassment Complaints; SPA Grievance and Appeals Procedures.

Contact Info: Vice Provost for Equal Opportunity and Equity (919-515-4559)

I. Policy Statement

Educational and employment decisions should be based on an individual's abilities and qualifications and should not be based on factors or personal characteristics that are not germane to academic abilities or job performance. Traditionally we have viewed race, sex, religion, and national origin as among those factors which are not connected with academic abilities or job performance. An individual's sexual orientation is another factor which is not relevant to educational and employment decisions. Therefore, only relevant factors are to be considered in such decisions and equitable and consistent standards of conduct and performance are to be applied at North Carolina State University. This internal policy does not apply to the University's relationships with outside organizations, including the federal government, the military, ROTC, and private employers.

II. Grievance Procedures

Faculty, staff, and students who have a complaint may seek appropriate redress regarding matters related to sexual orientation through existing grievance procedures.

III. Short Statement for Publications

One of the following short statements regarding the university's policy on sexual orientation is to be used in university publications whenever such publications contain abbreviated references to other university policies regarding discrimination.

"North Carolina State University regards discrimination on the basis of sexual orientation to be inconsistent with its goal of providing a welcoming environment in which all its students, faculty, and staff may learn and work up to their full potential. The University values the benefits of cultural diversity and pluralism in the academic community and welcomes all men and women of good will without regard to sexual orientation."

"NC State welcomes all persons without regard to sexual orientation."

Unlawful Harassment Policy Statement (Reg 04.25.04)

Authority: Issued by the Chancellor. Changes or exceptions to administrative regulations issued by the Chancellor may only be made by the Chancellor.

History: First issued, August 30, 1999; Endorsed by the University Council, August 9, 1999. Amendments endorsed by the University Council on August 21, 2000.

Related Policies: BOG interpretation of term "personal malice" used in UNC Code Section 604B, issued March 9, 1990; Board of Trustees Policy - Grievance Procedure for Faculty and EPA Professional Employees; Board of Trustees Policy - Racial Harassment; Board of Trustees Policy - Sexual Harassment; Board of Trustees Policy - Code of Student Conduct; Board of Trustees Policy - Uniform Student Grievance Procedures; Administrative Regulation - Equal Opportunity and Non-Discrimination Policy Statement; Administrative Regulation - Sexual Orientation Policy Statement; Administrative Regulation - Resolution Procedures for Harassment Complaints; SPA Grievance and Appeals Procedures.

Contact Info: Vice Provost for Equal Opportunity and Equity (919-515-4559)

I. Policy Statement

- A. Harassment based upon race, color, religion, creed, sex, national origin, age, disability or veteran status is a form of discrimination in violation of federal and state law and North Carolina State University policy, and will not be tolerated. It is the internal policy of North Carolina State University to prohibit harassment on the basis of sexual orientation.
- B. Retaliation against any person complaining of harassment is in violation of federal and state law and North Carolina State University policy, and will not be tolerated.
- C. North Carolina State University will respond promptly to all complaints of harassment and retaliation. Violation of this policy can result in serious disciplinary action up to and including expulsion for students or discharge for employees.
- D. Disciplinary action for violations of this policy will be the responsibility of the dean or director, supervisor, or Office of Student Conduct as may be appropriate in accordance with applicable procedures.
- E. North Carolina State University hereby affirms its desire to maintain a work environment for all employees and an academic environment for all faculty

and students that is free from all forms of harassment. Harassment is completely incompatible with the values and goals of North Carolina State University and will not be tolerated. The university strives to maintain an environment that supports and rewards individuals on the basis of such relevant factors as ability, merit and performance.

II. Definitions

- A. Harassment is unwelcome conduct, based upon race, color, religion, creed, sex, national origin, age, disability, or sexual orientation, that is either a condition of working or learning (quid pro quo) or creates a hostile environment.
- B. Quid Pro Quo Harassment consists of unwelcome conduct when:
 - 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, employment decisions, academic advancement or receipt of a needed or legitimately requested University service, or
 - 2. submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting such individual in matters of employment, employment decisions, academic advancement or receipt of a needed or legitimately requested University service.
- C. Hostile Environment Harassment consists of unwelcome conduct when:
 - 1. such conduct has the effect of unreasonably interfering with an individual's work or academic performance, or
 - 2. such conduct has the effect of creating an intimidating, hostile or offensive working or learning environment.
- D. Retaliation is conduct causing any interference, coercion, restraint or reprisal against a person complaining of harassment or participating in the resolution of a complaint of harassment.

III. Violations of Policy

- A. Any individual with a concern, grievance or complaint of harassment should utilize the procedures outlined in Administrative Regulation - Resolution Procedures for Harassment Complaints.
- B. Any individual with a concern, grievance or complaint of retaliation should utilize the procedures available under the Code of Student Conduct, the SPA Grievance and Appeals Procedures, or the Grievance Procedure for Faculty and EPA Professional Employees.

SPA Grievance and Appeal (Reg. 05.25.02)

Authority: Vice Chancellor for Finance and Business

History: November 1, 2002. Last Revised, May 1, 2003.

Related Policies: SPA Successive Discipline

Contact Information: Assistant Director for Employment Relations (919-515-6575).

I. SPA University Grievance Procedure

A. Purpose

University administration retains authority, as provided by law, to manage and direct its human resources. This includes the determination of workforce size, work assignments, hours of employment, promotion, demotion, transfer, or dismissal. Simultaneously, the University is committed to fair and equitable treatment of all employees. Therefore, the University has established this procedure for the fair, orderly, and prompt resolution of job related disputes that may arise between an SPA employee and anyone who is in a position of authority.

Employees, whether grievant, witness, panel member, or grievance assistant have the right to participate in this procedure free from interference, coercion, restraint, discrimination, or reprisal. Grievance procedures are not considered legal proceedings and attorneys are prohibited from attending any internal grievance proceeding.

B. Covered Employees

Any full-time or part-time SPA employee who has completed the probationary period may appeal a demotion, suspension or dismissal through the University's grievance procedure. SPA probationary employees are eligible to access the grievance procedure if alleging discrimination on the basis of sex, race, color, creed, age, political affiliation, religion, national origin, or disability, or if alleging the presence of misleading or inaccurate information in their personnel file.

C. Covered Actions

1. Appealable Actions

An SPA employee may utilize this procedure to appeal an action alleging

- a. a violation or misapplication of University policies;

- b. a violation or misapplication of rules pertaining to employment in the respective department;
 - c. a violation or misapplication of applicable laws or regulations, including anti-discrimination laws, the Americans with Disabilities Act (ADA), Age Discrimination in Employment Act (ADEA), Family and Medical Leave Act (FMLA), Fair Labor Standards Act (FLSA);
 - d. a suspension without pay, demotion, or dismissal;
 - e. inaccurate or misleading information in a personnel file; or
 - f. Unlawful Workplace Harassment (see separate procedure).
2. An SPA employee shall have access to the information contained in his/her personnel file, with the exception of letters of reference solicited prior to employment, or information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient. If an employee feels that information in his/her personnel file is inaccurate or misleading, he/she may file a grievance. This includes written warnings.
 3. An SPA employee must be allowed time off from regular duties as may be necessary and reasonable up to a maximum of eight hours for the preparation of an internal grievance, without loss of pay, vacation leave or other time credits. Prior supervisory approval is required. Employees are not allotted time off from regular duties for preparation of external grievances or complaints unless using annual leave which has been approved by supervision.

D. Requirements

1. Appeals

To appeal a disciplinary action or file a grievance, the SPA employee must contact the Division of Human Resources and complete an SPA Employee Grievance Form within the timeframe specified below. Additionally, the University's final written decision shall be issued within the specified timeframe unless both parties mutually agree to additional time.

a. Basis: Suspension, Demotion, Dismissal

Number of days to file: 15 workdays

Number of days for decision: 90 calendar days

b. Basis: Unlawful Workplace Harassment

Number of days to file: 30 calendar days

Number of days for decision: 60 calendar days

c. Basis: All Other Applicable Actions

Number of days to file: 15 workdays

Number of days for decision: 120 calendar days

2. Procedure

The grievant must complete and submit the entire grievance form, including Section C – Requested Resolution/Remedy, for the grievance to be processed. A Human Resources representative will then notify the department that a grievance has been filed and will oversee the steps of the grievance procedure as outlined in this policy.

3. Further Appeals

If the University's final written decision is not issued within the specified timeframes and no additional time has been agreed upon, the grievant may appeal to the Office of Administrative Hearings within 30 calendar days after the applicable deadline.

E. Grievance Assistant

1. Each party in the grievance may elect to ask a fellow employee of his or her choice to assist or support by accompanying them to any meetings or hearing held in response to the formal grievance. The assistant must be an NC State University employee who has no active disciplinary action on file and has completed training provided by Human Resources. The assistant is permitted to serve only in an advisory capacity, not as an advocate or spokesperson for the grievant or management. The grievance assistant may not serve as a witness in the case.
2. An employee may volunteer to be a grievance assistant no more than twice in a calendar year. The assistant must obtain prior management approval for any time away from work while functioning in this capacity.
3. Management should make every effort to accommodate a request by an employee to serve as a grievance assistant. However, if allowing this would interfere with the proper performance of the employee's regular job responsibilities, management does have the right to deny this request. Human Resources will provide training for employees volunteering to be grievance assistants. A list of trained volunteers will be maintained by Human Resources and provided to the parties in a grievance as requested.

F. Confidentiality

The University recognizes the confidential relationship between the grievance assistant and the parties to the grievance. Information shared during the investigation and proceedings of a grievance, written or spoken, shall be kept confidential and shall not be divulged except as required by law. Violations of

that confidential relationship are considered unacceptable personal conduct. Employees violating that confidence may be subject to disciplinary action.

G. Process

Once a grievance has been properly filed, the following 3-step process applies.

1. Step 1 – Waiver

Step 1 may be waived only if the grievant is alleging discrimination

Step 1 – Designee

Normally, the supervisor is designated to conduct the Step 1 review. Where the grievance does not fall within the administrative or decision-making authority of the immediate supervisor, or where other factors preclude assignments to the immediate supervisor, Human Resources shall, within 48 hours of receipt of the grievance, refer the grievance to the lowest level supervisor with administrative or decision-making authority over the subject matter of the grievance. The employee must be notified and given the basis for the referral.

a. Meeting between grievant and Step 1 Designee

The Step 1 designee shall meet with the grievant within five workdays of the date the department receives written notification of the grievance from Human Resources. The purpose of this meeting is to attempt to resolve the grievance without third party involvement.

b. Grievant notification of Step 1 ruling

The Step 1 designee is to provide the grievant with a written ruling within five workdays of the date of the meeting between the grievant and designee. If the grievant is still reporting to work, the written ruling shall be hand-delivered to him or her. Otherwise, the written ruling shall be sent to the grievant's home via overnight or certified mail. If there is any need to extend the five workday deadline for a written ruling, the designee must notify the grievant in writing of the reason for the delay and the date the grievant will receive the written ruling. Copies of all correspondence shall be forwarded to Human Resources.

c. Grievant satisfaction with Step 1

If the grievant is not satisfied with the Step 1 ruling, or fails to receive a ruling within the timeframe specified, he or she may proceed to Step 2. The grievant must notify Human Resources, in writing, within five workdays of receipt or attempted delivery by overnight or certified mail, of the Step 1 ruling, that he or she wants to proceed to Step 2. Failure to request Step 2 by the deadline will close the grievance.

2. Step 2 –

a. The grievant may request in writing, to proceed to Step 2 and have the grievance reviewed by the next level of management. The grievant must submit the appeal to Human Resources within five workdays of receipt or attempted delivery by overnight or certified mail, of the Step 1 ruling.

b. Waiver of Step 2

In cases where the department head or director was involved in the Step 1 ruling, Step 2 may be waived if agreed to by both parties.

c. Step 2 designee

Human Resources shall designate the next appropriate level of management that will be responsible for rendering a ruling at the conclusion of Step 2. The designee (normally the department head or director) will be provided with relevant information and instructions for carrying out Step 2. The designee is responsible for consulting with both parties and others as appropriate to gather all relevant information.

d. Meeting between grievant and Step 2 designee

The Step 2 designee shall meet with the grievant within five workdays of written notification from Human Resources of the grievant's request to proceed to Step 2. The purpose of this meeting is to seek resolution of the issue to the satisfaction of both the employee and management. The designee must notify Human Resources of completion of the meeting by the end of the business day on which the meeting took place.

e. Grievant notification of Step 2 ruling

i. The Step 2 designee is to provide in writing to the grievant, supervisor, department head, and Human Resources his or her ruling, and, if applicable, any recommended solution(s) to the grievance within five workdays of the date of the meeting. If this is not possible, the Step 2 designee must submit a written request to Human Resources for an extension.

ii. If the recommendation(s) would involve an exception to University policy, the designee will consult with Human Resources before rendering a ruling.

iii. In the absence of appeal by the grievant, any recommendations provided in the ruling should be carried out within the period of

time specified in the Step 2 ruling. Copies of all correspondence shall be forwarded to Human Resources.

- iv. If the grievant is still reporting to work, the written ruling shall be hand-delivered to him or her. Otherwise, the written ruling shall be sent to the grievant's home via overnight or certified mail.

f. Grievant satisfaction with Step 2

If the grievant is not satisfied with the Step 2 ruling or fails to receive a ruling within the timeframe specified, he or she may take the appeal to Step 3. The grievant must notify Human Resources, in writing, within five workdays of receipt or attempted delivery by overnight or certified mail, of the Step 2 ruling that he or she wants to proceed to Step 3. Failure to request Step 3 by the deadline will close the grievance.

3. Step 3 –

- a. The grievant may request in writing to proceed to Step 3 and have the grievance heard before a Grievance Review Panel. The grievant must submit the appeal within five workdays of receipt or attempted delivery by overnight or certified mail, of the Step 2 ruling.

b. Pre-hearing Activities

i. Panel Selection

The University maintains standing panels of specially trained employees to hear grievances. Each panel consists of a pool of supervisors and non-supervisors, from which three individuals are selected for each panel hearing by the following means:

- (a) Human Resources will assign one of the University's standing SPA Grievance and Dispute panels. The panel is selected by the Human Resources Grievance Coordinator based on panel availability, mix of college/unit representatives, and other factors

ii. Summary Information

- (a) Upon notification from Human Resources, the grievant must provide the panel with a specific written summary of all allegations and relevant documentation and a list of any witnesses who can substantiate the allegations or documentation. This summary should be forwarded to Human Resources within five workdays.

- (b) The management representative must also prepare a specific written summary providing any relevant documentation to

substantiate the actions which are being appealed by the grievant and include a list of any witnesses to be called. This summary should be forwarded to Human Resources within the five work days timeframe as well.

- (c) The Human Resources Grievance Coordinator will send written notice to the grievant and management representative advising them of the panel members and requesting additional information if necessary.
- (d) The Human Resources Grievance Coordinator will schedule and attend the initial panel meeting. The Grievance Coordinator will also attend any subsequent pre-hearing panel meetings as well as post-hearing meetings and deliberations in order to clarify any issues or questions the panel may have with regards to policies and/or procedures.

iii. Availability of opposing party information

- (a) The Human Resources Grievance Coordinator will provide each party with a copy of the written summary provided by the opposing party. Additional information that either party wants to make available to the panel should be presented to Human Resources at least one week prior to the hearing date. Copies of that information will be made available to the opposing party. Any request for an exception to the one-week deadline will be considered and decided by the panel.
- (b) The panel may request, in writing, the presence of any additional witnesses and may refuse to call any witness to speak if they determine the individual's testimony has no significant bearing on the case. In the event a panel questions the relevancy of the testimony of a potential witness, the grievant or management representative requesting the witness will be asked to provide the panel with a written justification outlining the nature and relevancy of the proposed testimony. Following a review of the written justification, the panel will advise the Human Resources Grievance Coordinator as to whether or not the witness will be allowed to appear.
- (c) Management will make arrangements for any University employee allowed by the panel to appear at the hearing. If a witness is allowed to testify at the hearing and he or she is not a University employee, it will be the responsibility of the requesting party to arrange for the witness to appear.

- iv. Time and place of hearings
 - (a) The Human Resource Grievance Coordinator will determine the time and place of hearings and will notify the employee and management representative when and where to appear.
 - (b) If the grievant is unable to attend the hearing on the scheduled date due to circumstances beyond his/her control, Human Resources must be notified and an alternate date will be scheduled. If the grievant fails or refuses to appear at the hearing, or fails to provide sufficient reasons for non-attendance, the appeal will be closed.
 - (c) The panel has the authority to place additional requirements upon the parties as long as they do not conflict with other provisions of this policy.
- v. Hearings
 - (a) Attendance at a hearing is limited to the panel, Human Resources representative(s), the grievant and a grievance assistant, management representative(s) and a grievance assistant, a Public Safety representative, and witnesses. Requests for exceptions to this provision should be addressed to Human Resources in writing no later than one week prior to the panel hearing. Witnesses may only be in the hearing room while testifying.
 - (b) The panel will tape record the proceedings and, at the conclusion of their deliberations, will forward the tapes to University Counsel for storage. Either party interested in obtaining a copy of tapes must contact University Counsel for information regarding access to the audiotapes. Tapes will not be forwarded to University Counsel until after the panel has concluded all deliberations and forwarded their recommendations to the appropriate party.
 - (c) The hearing will begin with an opening statement from the Panel Chairperson, followed by opening statements from the grievant and the management representative. Opening statements are limited to 15 minutes. Following opening statements, witnesses (if any) may be called to testify. Both the grievant and the management representative have the right to question each witness. The panel members may ask questions of the witnesses, grievant, and management representative(s) at any time. The hearing will end with closing statements, limited to 15 minutes each, from the grievant, management representative, and Panel Chairperson.

vi. Post-hearing Activities

- (a) The Human Resources grievance coordinator will attend all panel meetings and deliberations in order to clarify any issues or points of reference for the panel. The coordinator will assist the panel in the preparation of the panel report.
- (b) The Panel Chairperson or grievance coordinator will submit the panel's conclusions and recommendations in a final written report to the associate vice chancellor for Human Resources for review within five workdays following the hearing. Each panel member will sign the report. The purpose of this review is to ensure that recommendations are in compliance with state and University policy. In the event there is a policy concern, the associate vice chancellor for Human Resources, or designee, will immediately contact the grievance coordinator or the Panel Chairperson.
- (c) The associate vice chancellor for Human Resources or designee, in turn, will forward the final written report within three workdays to the vice chancellor for Finance and Business or his designee.
- (d) Final written decisions will be rendered to the grievant and management representative by the vice chancellor for Finance and Business or his designee within 10 workdays of receipt of the panel's recommendations. Human Resources will receive copies of all final written decisions.

vii. Further Appeals

If the grievant is not satisfied with the University's final written decision, he or she may appeal directly to the Office of Administrative Hearings and the State Personnel Commission:

- within 30 calendar days following the close of the decision period, or
- within 30 calendar days following receipt or attempted delivery by overnight or certified mail of the University's final written decision.

II. SPA Unlawful Workplace Harassment Procedure

A. Purpose

The policy of NC State University is that no employee may engage in speech or conduct that is defined as unlawful workplace harassment as indicated below. All employees, outside vendors and contractors are

guaranteed the right to work in an environment at NC State free from unlawful workplace harassment and retaliation. Any interference, coercion, restraint or reprisal of any person complaining of unlawful workplace harassment is prohibited.

B. Definitions

1. Unlawful Workplace Harassment is defined as unwelcome or unsolicited speech or conduct based upon race, sex, creed, religion, national origin, age, color, or handicapping condition as defined by G.S. 168A-3 that creates a hostile work environment or circumstances involving quid pro quo. In addition to these protected classes, veteran status is protected by Federal Law, and it is the internal policy of North Carolina State University to prohibit harassment on the basis of sexual orientation
2. Hostile Work Environment is defined as an environment that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the alleged harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance.
3. Quid Pro Quo is defined as harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
 - b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
4. Retaliation is defined as adverse action taken because of opposition to unlawful workplace harassment.

C. Covered Employees

1. Former employee, full-time or part-time SPA employee with either a permanent, probationary, trainee, time-limited, or temporary appointment. Note: Former and current SPA employees must proceed through the University Unlawful Workplace Harassment grievance procedures prior to appealing to the Office of Administrative Hearings and the State Personnel Commission. Applicants, while not covered under the State statute, are covered under other State and Federal Civil Rights Acts.

D. Requirements

1. An SPA employee alleging unlawful workplace harassment must contact the Division of Human Resources within 30 calendar days of the alleged harassing action and complete an SPA Employee Grievance Form (See Form A) to file a grievance. A Human Resources representative will then notify the department that a grievance has been filed and will oversee the steps of the grievance procedure as outlined herein.
2. SPA employees have the right to bypass any step in the grievance process involving review of or decisions by the alleged harasser.
3. Alleged harassers are not eligible to conduct any step in the grievance process.

E. Step 1

1. A prompt and impartial investigation by management of the alleged workplace harassment shall take place immediately upon written notification of the grievance by Human Resources or the grievant. Human Resources shall designate the level of management responsible for conducting the Step 1 review and rendering the ruling, and provide the designee with relevant information and procedural instructions.
2. The designee will consult with both sides and others, as appropriate, for the purpose of gathering all relevant information.
3. The designee is to provide the aggrieved employee with a written ruling stating any remedial action that will be taken within ten workdays of the date the department was notified of the grievance.
4. If the grievant is not satisfied with the Step 1 ruling, or fails to receive a ruling within the timeframe specified above, he or she may appeal to Step 2. The grievant must notify Human Resources, in writing, within five workdays of receipt or attempted delivery by overnight or certified mail of the Step 1 ruling that he or she wants to proceed to Step 2. Failure to request Step 2 by the deadline will close the grievance.

F. Step 2

1. An appeal to Step 2 panel must include a specific written summary of all allegations and relevant documentation and a list of any witnesses who can substantiate the allegations or documentation.
2. In Step 2, a standing Unlawful Workplace Harassment Review Panel will hear the grievance. The panel consists of supervisors and non-supervisors. The hearing shall take place within 30 calendar days of the Step 1 decision.
3. Post-hearing Activities

- a. The Human Resources grievance coordinator will attend all panel meetings and deliberations in order to clarify any issues or points of reference for the panel. The coordinator will assist the panel in the preparation of the panel report.
- b. The Panel Chairperson or grievance coordinator will submit the panel's written report to the associate vice chancellor for Human Resources for review within five workdays following the hearing. Each panel member will sign the report. The purpose of this review is to ensure that recommendations are in compliance with state and University policy. In the event there is a policy concern, the associate vice chancellor for Human Resources, or designee, will immediately contact the grievance coordinator or the Panel Chairperson.
- c. The associate vice chancellor for Human Resources or designee, in turn, will forward the final report within three workdays to the vice chancellor for Finance and Business or his designee.
- d. The University's final written decision will be rendered to the grievant and management representative by the vice chancellor for Finance and Business or his designee within 5 workdays of receipt of the panel's recommendations. Human Resources will receive copies of all final decisions.

G. Further Appeals

1. If the grievant is not satisfied with the University's final written decision, he or she may appeal directly to the Office of Administrative Hearings and the State Personnel Commission:
 - within 30 calendar days following the close of the response period
 - within 30 calendar days following receipt or attempted delivery by overnight or certified mail of the University's final written decision.
2. Should the University issue a final written decision to the grievant prior to the close of the allotted 60-day investigation period, the University shall waive in writing its right to the remainder of the 60 day period. To file an appeal within the waived period, the grievant will acknowledge in writing the University's waiver.
3. A grievant may file a simultaneous complaint under Title VII of the Civil Rights Act with the Equal Employment Opportunity Commission (EEOC).

H. Policy Review

1. The university will evaluate its grievance procedures on an annual basis.

III. Appeals to the State Personnel Commission

A. Purpose

If an SPA employee is not satisfied with the final University decision on a grievance, or is alleging discrimination, the employee may appeal to the State Personnel Commission.

B. Covered Employees

1. Career Employees: Effective July 1, 1996, career status will be accorded to every state employee who is in a permanent position appointment subject to the State Personnel Act (SPA) and has been continuously employed by the State of North Carolina in an SPA position for the immediate 24 preceding months. In order to appeal a final University grievance decision to the State Personnel Commission, an employee must have attained career status at the time of the act, grievance or employment practice that is the basis for the grievance occurs.
2. Probationary Employees: This appeal is available to SPA probationary employees who allege:
 - unlawful employment discrimination or
 - the presence of misleading or inaccurate information in their personnel files.

C. Requirements

1. Eligible employees appealing to the State Personnel Commission must do so within 30 calendar days from receipt or attempted delivery by overnight or certified or certified mail, of the University's final decision. Employees alleging discrimination may appeal directly to the State Personnel Commission should they choose not to utilize the University's Grievance and Appeals Procedure. Grievances that do not allege discrimination must follow the University's grievance procedure.
2. All appeals to the State Personnel Commission must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714; phone (919) 733-2698.
3. Grievances filed on an untimely basis will be dismissed. Allegations of discrimination raised more than 30 calendar days after receipt of notice of the occurrence of the alleged discriminatory act will be dismissed as untimely.
4. Employees should be granted necessary and reasonable time for participation in contested case hearings and other administrative proceedings outside the agency in connection with employment upon request of the employee's supervisor without loss of pay, vacation leave or

other time credits. Management may require prior official notice of the scheduling of any such proceedings and documentation by the presiding official of the time the employee spent in attendance at these administrative proceedings.

Affirmative Action Policy Statement (Reg 05.55.01)

Authority: Issued by the Chancellor. Changes or exceptions to administrative regulations issued by the Chancellor may only be made by the Chancellor.

History: First Issued, 1975.

Related Policies: Administrative Regulation No. 1120.00.1 – Equal Opportunity and Non-Discrimination Policy Statement; Board of Trustees Policy No. 1120.00.0 – Racial Harassment Policy; Board of Trustees Policy No. 1120.00.2 – Sexual Harassment Policy; Administrative Regulation No. 1120.00.3 – Sexual Orientation Policy Statement; Administrative Regulation No. 1120.00.4 – Unlawful Harassment Policy Statement.

Contact Info: University Affirmative Action/Equal Opportunity Office (919-515-4559).

I. Purpose

To specify the University's policy of equal employment opportunity through affirmative action and to identify responsibility for actions in support of a positive program to meet legal obligations and University diversity goals as outlined in the Affirmative Action Plan in accordance with Executive Order 11246.

II. Policy Statement

It is the policy of NC State University to provide equal opportunity in all terms and conditions of employment, for all persons, as described in the University's Affirmative Action Plan. The intent of this policy is to ensure the full realization of equal opportunity through a continuing affirmative action program in each administrative unit outlined in the Plan. This policy of equal opportunity applies to, and must be an integral part of, every aspect of personnel policy and practice in the employment, development, advancement, and treatment of employees and applicants for employment at NC State University.

III. Responsibility

- A. Responsibility for the development of the Affirmative Action Plan is hereby assigned to the vice provost for equal opportunity and equity who serves as the University's Affirmative Action Officer and directs the Office for Equal Opportunity.
- B. The head of each administrative unit identified in the Affirmative Action Plan, and subunits as identified by the Office for Equal Opportunity, shall be responsible for working with the staff of the Office for Equal Opportunity in implementing the requirements of the Plan.

1. It is the responsibility of each Dean, Director, and Department Head to:
 - a. Submit to the Office of Equal Opportunity by April 15th each year a "Status Report for Recruitment and Retention" describing the unit's progress regarding the implementation of strategies for improvement in the recruitment and retention of women and minorities.
 - b. Provide sufficient resources to administer such a program in a positive and effective manner.
 - c. Collaborate with Human Resources to assure that recruitment activities reach appropriate sources of job candidates.
 - d. Provide reasonable opportunities for employees to enhance their skills so they may perform at their highest potential and advance with their abilities.

IV. Affirmative Action Compliance

- A. The Office for Equal Opportunity shall be responsible for preparing guidelines and instructions necessary and appropriate to carry out the intent of this University policy and the Affirmative Action Plan.
- B. The Office for Equal Opportunity will evaluate and monitor continuously the Affirmative Action Plan by:
 1. Establishing goals and timetables to reduce and eliminate underutilization of all groups;
 2. Reviewing and evaluating administrative unit program operations periodically and reporting to the Chancellor as appropriate on overall progress.
- C. The Office for Equal Opportunity will provide training and advice to managers and supervisors to assure their understanding and implementation of the University's policy of equal opportunity and the Affirmative Action Plan.

Memorandum Regarding NC State University Computers and Pornography

On May 12, 2003 the Office of Legal Affairs, the Office for Equal Opportunity, and the Department of Information Technology issued a joint memorandum addressing the use of NC State University computing facilities and free speech issues regarding pornography. This memo is reprinted below.

MEMORANDUM

TO: University IT Committee, Associate Deans for Academic Affairs, Tim Luckadoo and Stan North Martin

FROM: David Drooz, Rhonda Sutton, Sam Averitt

DATE: May 12, 2003

RE: NC State Computers and Pornography

Some NC State computer labs post notices that prohibit viewing of pornography. Other public computing facilities at NC State leave the matter to user discretion. There have been complaints that pornography on computer monitors in public areas amounts to harassment and counter-arguments that such displays are constitutionally protected free speech. We offer the following advice on these issues.

1. NC State generally allows “personal use” of university computing facilities. See Section III of the **Computer Use Regulation** at <http://www.ncsu.edu/policies/informationtechnology/REG08.00.2.php>
2. Given the decision to allow personal use, NC State cannot prohibit users from accessing lawful content (although employees can be restricted as to uses made during work time – the State is not paying our salaries to support non-work Web surfing). In legal terms, the First Amendment prohibits content-based restrictions once the computing system is established as a “limited public forum.” The network and computing systems are a “limited” forum in the sense that only authorized users may access them, but they are a “public” forum in the sense that we allow personal use by those authorized users.
3. Lawful content includes sexually explicit material that is not pornographic and also includes some pornography. However, pornography loses its constitutional protection under the law in three situations:
 - a. Child pornography (it is a criminal offense to possess or distribute – this includes accessing it by computer).¹

- b. Obscenity (it is a criminal offense to distribute).²
 - c. Sexual harassment³ (it is a civil liability under non-discrimination laws)⁴
4. Display (or communications or conduct) of a sexual nature can be sexually harassing when it is unwelcome (*i.e.*, it offends someone), and it is so “severe of pervasive” that it unreasonably interferes with a person’s ability to do his or her job or academic work. The legal standard is whether a reasonable person in the particular circumstances would be offended. For example, a “captive audience” is more likely to prevail on a harassment claim than someone who can avoid the offending matter. It’s not clear in the law that pornography or other sexually explicit material displayed on a monitor in a public lab is harassing if students are offended when they have to walk by it to get to other machines. Each case will turn on specific facts and the legal standards are subject to change.
5. The university has a legal duty to prevent sexual harassment. The university also has a legal duty to uphold free speech rights.
6. People who administer public or shared computing facilities can take either of two approaches:
- a. First, do not prohibit users from view sexually explicit material or pornography. You may however, post information on how to lodge harassment complaints⁵, and then you will have to judge each situation individually. That process is best done by consulting with the Assistant Vice Provost/Director of Harassment Prevention Programs in the Office for Equal Opportunity.
 - b. Second, some facilities may be designated “for curricular use only” meaning personal computing is banned. This is a constitutionally acceptable limit because it relates to the university’s mission without getting into content restrictions. If this option is chosen, the restriction should be clearly posted⁶ and it should be enforced against all types of personal computing not just the viewing of pornography or sexually explicit material. It does not require close policing of users but it would require a response to complaints (*e.g.*, if someone had homework to do, they could complain about another user tying up a machine with game-playing). If this option is chosen, it would be best to inform users of other facilities where general (*i.e.*, personal) computing is allowed.

¹ For example, N.C.G.S. 14-190.17A provides in part:

- (a) Offense. – A person commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaged in sexual activity.

- (b) Inference. – In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations or otherwise represents or depicts as a minor is a minor.
- (c) Mistake of Age. – Mistake of age is not a defense to a prosecution under this section.

² For example, N.C.G.S. 14-190.1 provides in part:

- (a) it shall be unlawful for any person, firm or corporation to intentionally disseminate obscenity ...
- (b) For purposes of this Article any material is obscene if:
 - (1) The material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (c) of this section; and
 - (2) The average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and
 - (3) The material lacks serious literary, artistic, political, or scientific value; and
 - (4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.
- (c) As used in this article, “sexual conduct” means:
 - (1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted; or
 - (2) Masturbation, excretory functions, or lewd exhibition of uncovered genitals; or
 - (3) An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.
- (d) Obscenity shall be judged with reference to ordinary adults except that it shall be judged with reference to children or other especially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be especially designed for or directed to such children or audiences.

³ It is possible in some cases that material related to sex will not be pornographic (*i.e.*, not intended to be sexually arousing) but it still could be harassing.

⁴ This is also addressed in University policy. See Sexual Harassment Policy (POL 04.25.03)

⁵ A sign in the computer lab could state: “Concerns or complaints related to unlawful harassment may be reported to the Office for Equal Opportunity, 1 Holladay Hall, Phone: 513-1234 or by email to report_harassment@ncsu.edu.”

⁶ Users could be notified by a sign clearly posted in the computing lab that says something like: “This computing lab may be used for NC State work-related or academic computing only. For general computing needs, you may use the facilities at _____ [indicate nearest computing labs that allow personal use].”

Computer Use Policy (Pol 08.00.01)

Authority: Board of Trustees

History: First issued April 17, 1998.

Additional References: UNC Code, Appendix I.C. and XII

Related Regulations: Computer Use Regulation

Contact Information: Associate Vice Chancellor for Resource Management and Information Systems (919-515-9224)

1. Introduction

North Carolina State University's (hereinafter "University") computer networks, equipment and resources are owned by the University and are provided primarily to support the academic and administrative functions of the University. The use of this equipment and technologies is governed by federal and state law, and University policies and procedures

2. Regulatory Limitations

Students and employees of NC State are authorized to use computer networks, equipment and related resources pursuant to administrative regulations established and promulgated by the Chancellor or his or her designee. Administrative regulations shall address at a minimum the following:

- 2.1. The University's right to examine electronic information stored on or passing over University equipment or networks.
- 2.2. The University's right to limit access when federal or state laws or University policies are violated or where University contractual obligations or University operations may be impeded.
- 2.3. The conditions under which employees and students may access University computing equipment, systems and networks, including access for personal use.
- 2.4. The conditions under which the University will access personal material on University equipment, systems and networks.

3. Violation of Policies and Regulations

- 3.1. Faculty and EPA non-faculty who violate University computer use policies or regulations issued by the Chancellor or his designee shall be deemed to have engaged in misconduct under EPA policies. SPA employees who violate such

University policies or regulations shall be deemed to have committed "unacceptable personal conduct" under SPA policies. For students, violations are misconduct under the applicable student disciplinary code. Violators may be referred to the appropriate disciplinary procedure. Violations of law may also be referred for criminal or civil prosecution. Sanctions may include revocation of access privileges in addition to other sanctions available under the regular disciplinary policies.

- 3.2. Apart from referrals to disciplinary procedures, a University system administrator (or designees) may suspend a user's access privileges for as long as necessary in order to protect the University's computing resources, to prevent an ongoing threat of harm to persons or property, or to prevent a threat of interference with normal University functions. Administrative regulations shall provide a user an opportunity to meet with the system administrator as soon as practicable following the suspension of access privileges to discuss the suspension and any reasons why the suspension should be lifted.

4. Additional Rules

- 4.1. comply with applicable federal and state laws;
- 4.2. be consistent with this policy and University administrative regulations;
- 4.3. be posted in writing or electronically in a manner that is available to all affected users; and
- 4.4. be filed with the Office of Legal Affairs, the Associate Vice Chancellor for Resource Management and Information Systems, and the Vice Provost for Information Technology.

Computer Use Regulation (Reg 08.00.02)

Authority: Issued by the Chancellor. Changes or exceptions to administrative regulations issued by the Chancellor may only be made by the Chancellor.

History: First issued, January 8, 1999. Last Revised, August 8, 1999.

Related Policies: Board of Trustee Policy - Computer Use.

Additional References: Advice Memo on Public Computers and Pornography.

Contact Info: Associate Vice Chancellor for Resource Management and Information Systems (919-515-9224)

I. Introduction

North Carolina State University's (hereinafter "University") computer networks, equipment and resources are owned by the University and are provided primarily to support the academic and administrative functions of the University. The use of this equipment and technologies is governed by federal and state law, and University policies and procedures

II. Regulatory Limitations

A. Accounts are for the exclusive use of the individual to which they were assigned and users may not allow or facilitate access to University computer accounts, equipment, or restricted files or systems by others. Users may not set up a proxy or anonymous remailer for purposes of allowing access to others.

1. Students and employees of NC State are authorized users unless access privileges have been revoked under University procedures.
2. Guest accounts may be authorized by the Associate Vice Chancellor for Resource Management and Information Systems, or the Vice Provost for Information Technology, or their designees.

B. The University may examine personal electronic information stored on or passing over University equipment or networks, for the following purposes:

1. To insure the security and operating performance of its systems and networks.
2. To enforce University policies or compliance with state or federal law where:

- a. Examination is approved in advance by a dean, vice chancellor, or vice provost, and either
- b. there is a reasonable suspicion that a law or University policy has been violated and examination is appropriate to investigate the apparent violation, or
- c. examination is necessary to comply with a state or federal law.

Computer Users should have no expectation of privacy in *personal* material sent, received, or stored by them on or over the University computing systems or networks when the conditions of subparagraph 1, or *both* 2(a) and 2(b), or *both* 2(a) and 2(c) above have been satisfied.

- C. For information related to university business, a supervisor or other university official may have access for any work-related purpose. No permission or approval is needed for such access. If personal and business information are not clearly separated, a university official may examine all information to the extent needed to separate and access business information for work-related purposes.
- D. The University reserves the right to limit access when federal or state laws or University policies are violated or where University contractual obligations or University operations may be impeded.
- E. The University may authorize confidential passwords or other secure entry identification; however, users should have no expectation of privacy in the material sent or received by them over the University computing systems or networks. While general content review will not be undertaken, monitoring of this material may occur for the reasons specified above.
- F. All material prepared and utilized for purposes of University business and posted to or sent over University computing equipment, systems or networks must be accurate and must correctly identify the sender, unless a University administrator (department head or higher) approves anonymity for a University business purpose.
- G. Any traffic on the University's networks, stripped of information content, may be monitored for operational or research purposes.
- H. All material prepared for purpose of University business and posted to or sent over University computing equipment, systems, or networks must be limited to information needed for University business. Personal quotations or other

personal statements in signature blocks are not permitted. Supervisors are responsible for enforcement of this provision.

III. Personal Use

Authorized users may access University computing equipment, systems and networks for personal uses if the following conditions are met:

- A.** The use is lawful under federal and state law.
- B.** The use does not violate any policy or directive of the Board of Governors, the NC State Board of Trustees, the UNC General Administration, or the NC State administration.
- C.** The use does not overload the University computing equipment or systems, or otherwise negatively impact the system's performance.
- D.** The use does not result in commercial gain or private profit, except as allowed under University intellectual property policies and the external activities for pay policy. However, in no case may University computing resources be used for solicitation of external activity for pay.
- E.** The use does not violate any University licensing agreements or any law or University policy on copyright and trademark.
- F.** The use does not state or imply University sponsorship or endorsement.
- G.** The use does not violate laws or University policies against race, sex, religious, disability, or age discrimination, or harassment.
- H.** The use does not involve unauthorized passwords or identifying data that attempts to circumvent system security or in any way attempts to gain unauthorized access.
- I.** The use does not involve sending or soliciting chain letters, nor does it involve sending unsolicited bulk mail messages (e.g., "junk mail," or "spam," or "MLM").
- J.** The use does not result in any direct cost to the University.
- K.** Any creation of a personal World Wide Web page or a personal collection of electronic material that is accessible to others must include a disclaimer that reads as follows:

"The material located at this site is not endorsed, sponsored or provided by or on behalf of North Carolina State University."

- L. University computers must be registered with NC State in the ncsu.edu domain. It is forbidden to register a non-ncsu.edu domain for any computer which is connected to the NC State network without prior approval of the Associate Vice Chancellor for Resource Management and Information Systems or the Vice Provost for Information Technology. If such approval is given, it must be made clear that the non-ncsu.edu address is using NC State resources for delivery.

IV. Use of Computing Facilities for Commercial, Advertising, or Broadcast Services

- A. No paid advertising will be allowed on official University Websites. However, an NC State Website may contain a simple acknowledgment of sponsorship by an outside entity in the following form: "Support for this Website [or university unit] has been provided by _____."

 - 1. An "official University Website" is any World Wide Web address that is sponsored or endorsed or created on authority of a University department or administrative unit. Websites on University servers are either "University Websites" or personal Websites allowed by the University.
 - 2. "Paid advertising" means advertising or promotional information provided in exchange for legal consideration, including money or other valuable benefits.

- B. Personal Web pages that are maintained by University computer account holders may not contain paid advertising. This guideline is consistent with the University policy against use of University resources for private gain or commercial purposes.
- C. University computer account holders may send advertisements to news groups dedicated to advertising. The ads may not refer readers to a University telephone number. Like other personal use of State computing resources, the ads must be sent on an employee's own time, not during hours when they are being paid to work.
- D. University computer account holders may not "broadcast" E-mail messages without prior approval from a University official with the rank of chancellor, provost, vice chancellor for finance and business, or their designees. "Broadcast" means transmission of a message to a significant number of computer accounts on a University server or servers; the intent is to prevent mass mailings from tying up employee time and computer resources.
- E. Registered marks of the University (e.g., an image of a wolf) may be used in the Websites of University computer account holders on the conditions that (a) they are not used for or related to private profit or commercial purposes,

and (b) they do not mislead or confuse viewers as to whether the Web page is University-sponsored.

- F. The Chancellor or designee may approve specific exceptions to the prohibition on paid advertising.

V. Violation of Policy

- A. Any violation of this policy by employees may be "misconduct" under EPA policies (faculty and EPA non-faculty), or "unacceptable personal conduct" under SPA policies. For students, violations are misconduct under the applicable student disciplinary code. Violators may be referred to the appropriate disciplinary procedure, and violations of law may also be referred for criminal or civil prosecution. Sanctions may include revocation of access privileges in addition to other sanctions available under the regular disciplinary policies.
- B. Apart from referrals to disciplinary procedures, a University system administrator (or designees) may suspend a user's access privileges or suspend services to a computer, for as long as necessary to protect the University's computing resources, to prevent an ongoing threat of harm to persons or property, or to prevent a threat of interference with normal University functions. As soon as practicable following the suspension of access privileges, the system administrator must take the following actions:
 - 1. The user must be sent written or electronic notice of the suspension of access and the reasons for it, and notice of the time, date, and location at which the suspension may be discussed with the system administrator.
 - 2. The user must be given an opportunity to meet with the system administrator at his or her earliest convenience to discuss the suspension and present any reasons the user has why the suspension should be lifted. The system administrator must reconsider his or her suspension decision in light of the information received at this meeting.
 - 3. Following the meeting, the user must be sent a copy of the system administrator's decision upon reconsideration, and must be notified that the user may appeal to the system administrator's immediate supervisor if the user is dissatisfied with the outcome of the meeting.

VI. Application of Public Records Law

All information created or received for University work purposes and contained in University computing equipment files, servers or electronic mail (e-mail) depositories are public records and are available to the public unless an exception to the Public Records law applies.

VII. Additional Rules

- A.** Comply with applicable federal and state laws;
- B.** Be consistent with the policies of NC State and the University of North Carolina;
- C.** Be posted in writing or electronically in a manner that is available to all affected users; and
- D.** Be filed with the Office of Legal Affairs, the Associate Vice Chancellor for Resource Management and Information Systems, and the Vice Provost for Information Technology.

Resources

This section includes both internal and external sources of information. Although the list is by no means complete, it will help you locate important information and related links.

This section contains lists of resources providing in-depth information about legislation, university policies, and organizations supporting prevention of unlawful harassment.

Any questions or concerns regarding the appropriate use of these resources should be directed to the Office for Equal Opportunity Director of Harassment Prevention Programs (513-1234).

Internal Resources

The following are divided by department and contains both contact information and web links to divisions within a department .

NC State University Resources

Office for Equal Opportunity

Vice Provost for Equal Opportunity and Equity

Joanne Woodard

515-4559

joanne_woodard@ncsu.edu

Assistant Vice Provost for Equal Opportunity and Equity / Director of Harassment Prevention and Equity Programs

Rhonda Sutton

513-1234

rhonda_sutton@ncsu.edu

Director of ADA and Affirmative Action Programs /Assistant Equal Opportunity Officer

Greg Holden

515-7258

greg_holden@ncsu.edu

Coordinator of Outreach & Education

Beverly Williams

513-3836

beverly_williams@ncsu.edu

Director of Disability Services for Students

Cheryl Branker

515-7653

cheryl_branker@ncsu.edu

Office for Equal Opportunity

http://www.ncsu.edu/provost/offices/affirm_action/

Office for Equal Opportunity – Affirmative Action

http://www.ncsu.edu/equal_op/affirmative.html

Office for Equal Opportunity– Disability Resources

http://www.ncsu.edu/equal_op/disability.html

Office for Equal Opportunity – Gender Equity

http://www.ncsu.edu/equal_op/gender.html

Office for Equal Opportunity – Harassment Prevention and Resolution

http://www.ncsu.edu/equal_op/harassment.html

Office for Equal Opportunity – News and Publications

http://www.ncsu.edu/equal_op/pubs.html

Office for Equal Opportunity – Related Links and Other Resources

http://www.ncsu.edu/equal_op/resources.html

Office for Equal Opportunity – Training and Educational Opportunities

http://www.ncsu.edu/equal_op/education.html

Office for Equal Opportunity – University Policies

http://www.ncsu.edu/equal_op/policies.html

Human Resources

Administration – Associate Vice Chancellor

Charlene Hayes
515-3443
charlene_hayes@ncsu.edu

Employee Relations and Training Services – Director

Dianne Sortini
515-4281
dianne_sortini@ncsu.edu

Assistant Director – Employee Relations

Galen Jones
515-4300
galen_jones@ncsu.edu

Training

General Information
515-7844

Human Resources
<http://www2.acs.ncsu.edu/hr/>

Human Resources – Employee Relations
<http://www2.acs.ncsu.edu/hr/employee.html>

Human Resources – Policies and Procedures
<http://www2.acs.ncsu.edu/hr/pptoc.html>

Human Resources – Training Services
<http://www2.acs.ncsu.edu/hr/trainserv.html>

Office of Legal Affairs

Vice Chancellor and General Counsel

Mary Elizabeth Kurz
515-3071
marybeth_kurz@ncsu.edu

Senior Associate General Counsel

David E. Broome, Jr.
515-2696
david_broome@ncsu.edu

Associate General Counsel

David T. Drooz

515-1006

david_drooz@ncsu.edu**Associate General Counsel**

Eileen S. Goldgeier

515-2926

eileen_goldgeier@ncsu.edu**Associate General Counsel**

Laura L. Ratchford

513-4051

laura_ratchford@ncsu.edu

Office of Legal Affairs

<http://www.ncsu.edu/legal/index.php>

Office of Legal Affairs – Legal Topics

http://www.ncsu.edu/legal/legal_topics.php

Office of Legal Affairs – Policies and Regulations

<http://www.ncsu.edu/legal/policies.php>

Office of Legal Affairs Policies and Regulations: Administrative and Academic Regulations

http://www.ncsu.edu/legal/pols_regs/adminregs.php

Office of Legal Affairs - Workshops

<http://www.ncsu.edu/legal/workshops.php>**Administrative Information****Campus Police Department**

Jennie Allen

Emergency Non-Emergency

515-3333 515-3000

jennie_allen@ncsu.edu

Administrative Procedures Manual


<http://www.bas.ncsu.edu/procman/>


Campus Police Department

http://www2.ncsu.edu/ncsu/public_safety/psdhome.html

External Resources

The following resources are divided into federal and state authority and a section of private organizations that may provide additional relevant information:

 Federal Resources

 State Resources

 Other Resources

Federal Resources

U.S. Equal Employment Opportunity Commission

Headquarters:
1801 L Street, N.W.
Washington, DC 20507
Phone: (202) 663-4900
TTY: (202) 663-4494
<http://www.eeoc.gov/>

Raleigh Area Office:
1309 Annapolis Drive
Raleigh, NC 27608-2129
Phone: (919) 856-4064
TTY: (919) 856-4296

EEOC – Federal Laws Prohibiting Job Discrimination
<http://www.eeoc.gov/facts/qanda.html>

EEOC – Americans With Disabilities Act Primer
<http://www.eeoc.gov/ada/adahandbook.html>

EEOC – Laws, Regulations, and Policy Guidance
<http://www.eeoc.gov/policy/index.html>

EEOC – Outreach and Training
<http://www.eeoc.gov/outreach/index.html>

U.S. Department of Education: Office for Civil Rights

Headquarters:
Federal Office Building 6
400 Maryland Avenue
Washington, D.C. 20 20202
Phone: (202) 401-2000
<http://www.ed.gov/offices/OCR/>

Region IV Area Office:
61 Forsyth St. SW
Suite 19T40
Atlanta, GA 30303
Phone: (404) 562-6225

Information for Higher Education Administrators and Institutions
<http://www.ed.gov/audience/audience.jsp?type=I&top=Higher+Education+Administrators+%26+Institutions>

Laws, Regulations, and Policy Guidance

<http://www.ed.gov/topics/topics.jsp?&top=Policy>

Publications and Products

<http://www.ed.gov/about/pubs.jsp>

Regional Equity Assistance Center

<http://www.southeastequity.org/>

Region IV Comprehensive Center

<http://www.acl.org/cac/>

Region IV and NC State Resources

<http://www.ed.gov/Programs/state.cgi?465,213>

Southeastern Equity Center

<http://www.southeastequity.org/>

U.S. Department of Justice

U.S. Department of Justice

Civil Rights Division

950 Pennsylvania Avenue, N.W.

Office of the Assistant Attorney General, Main

Washington, D.C. 20530

(202) 514-4609

<http://www.usdoj.gov/crt/crt-home.html>

Disability Rights Section

<http://www.usdoj.gov/crt/drs/drshome.htm>

Educational Opportunities Section

<http://www.usdoj.gov/crt/edo/index.html>

U.S. Department of Labor

Headquarters:

Frances Perkins Building

200 Constitution Avenue, NW

Washington, DC 20210

Phone: 1 (866) 4US-ADOL

<http://www.dol.gov>

Regional:

(see NC Dept of Labor
under State Resources)

Office of Federal Contract Compliance Programs

http://www.dol.gov/esa/ofcp_org.htm

State Resources

State Board of Education

301 N. Wilmington Street
Raleigh, NC 27601
(919) 807-3300

Legal Affairs

<http://www.ncpublicschools.org/legal/>

Legislative Report

http://149.168.35.203/legislative_report/

NC General Assembly

NC General Statutes

<http://www.ncga.state.nc.us/gascripts/Statutes/statutestoc.pl>

General Assembly Bill Information and Inquiry

<http://www.ncga.state.nc.us/BillInfo/BillInfo.html>

NC Department of Justice

NC Office of the Attorney General
P.O. Box 629
Raleigh, NC 27602-0629
(919) 716-6400

<http://www.jus.state.nc.us/>

NC Department of Labor

Commissioner
4 West Edenton Street
Raleigh, NC 27601
(919) 807-2796

<http://www.dol.state.nc.us/>

NC Office of Administrative Hearings

Civil Rights Division
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-0431

<http://www.oah.state.nc.us/>

NC Office of State Personnel

116 West Jones Street
1331 Mail Service Center
Raleigh, NC 27699-1331
(919) 733-6316
<http://www.osp.state.nc.us/ExternalHome/>

Other Resources

American Association for Affirmative Action (AAAA)
<http://www.affirmativeaction.org/>

American Association of People with Disabilities
<http://www.aapd-dc.org/>

American Civil Liberties Union
<http://www.aclu.org/>

Association on Higher Education and Disability
<http://www.ahead.org/>

College and University Professional Association for Human Resources
<http://www.cupahr.org/>

The Progressive Coalition for Equal Opportunity and Justice
<http://www.civilrights.org/>

National Association for Equal Opportunity in Higher Education
<http://www.nafeo.org/>

National Association for the Advancement of Colored People
<http://www.naacp.org/>

National Gay and Lesbian Task Force
<http://www.nglftf.org/index.cfm>

National Organization for Women
<http://www.now.org/>

Office of Minorities in Higher Education
<http://www.acenet.edu/programs/omhe/>

Women's Education Equity Act Program
<http://www.edc.org/WomensEquity/>

Index

A

academic freedom, 59, 60
 ADA. *See Americans With Disabilities Act*
 ADEA. *See Age Discrimination in Employment Act*
 Administrative Regulations, 67, 68, 138.
See Policies, regulations
 Affirmative Action Policy, 69, 121
 Computer Use Regulation, 61, 70, 129
 Equal Opportunity and Non-Discrimination Policy, 69, 96
 Resolution Procedures for Harassment Complaints, 69, 98
 Sexual Orientation Policy, 69, 103
 SPA Grievance and Appeal, 69, 107
 Unlawful Harassment Policy, 69, 105
 administrator, iii, 20, 22, 23, 29, 43, 46, 49, 64, 65, 66, 67
 adverse action, 3, 4, 5. *See retaliation*
 affected party, iii. *See grievant*
 Age Discrimination in Employment Act, 11, 15, 54
 Americans With Disabilities Act, 55, 56, 140
 individual with a disability, 56
 qualified individual, 56
 reasonable accommodation, 16, 17, 57
 direct threat, 16, 17
 drug and alcohol use, 58
 prohibited inquiries and examinations, 58
 undue hardship, 16, 57

B

bona fide occupational qualification, 3, 15, 54

C

Chancellor's Statement, i
 Civil Rights Act
 of 1964, 54
 of 1991, 58
 complainant, iii, 6. *See grievant*
 computer use, 61, 70, 123, 127, 129
 confidentiality, 26, 34, 36, 38, 39, 46, 49, 65, 66
 consequences, 64
 academic, 17
 institutional, 18
 physical and emotional, 18
 professional, 18
 constructive discharge, 8, 9
 covered categories, 3, 4. *See protected class*

D

dean, 20, 22, 67. *See administrator, supervisor*
 definitions, iii, 10
 accused. *See respondent*
 administrator, iii
 bona fide occupational qualification, iii
 dean. *See administrator*

Director of Harassment Prevention
 Programs, iii
 discrimination, 2
 harassment, 3
 retaliation, 3
 unlawful, 2
 environment
 academic, 1
 employment, 1
 hostile, 7
 EPA, iv
 Equal Employment Opportunity
 Commission, iv
 Fair Employment Practices Agency, iv
 grievant, iv
 Harassment Resolution Officer, iv
 Human Resources, v
 Office for Civil Rights, v
 Office for Equal Opportunity, v
 Office of Administrative Hearings, v
 Office of Legal Affairs, v
 Office of State Personnel, v
 protected class, vi
 quid pro quo, 9
 reasonable standard, 7
 respondent, vi
 SPA, vi
 unit head. *See administrator*
 unwelcome standard, 5
 victim, vi
 Department of Information Technology,
 123
 Director of Harassment Prevention
 Programs, iii
 discrimination, i, 2, 4, 5, 10, 12, 13, 14, 16,
 17, 20, 21, 22, 23, 24, 25, 26, 39, 52, 53,
 55, 56, 58, 62, 63, 64, 65, 67, 68
 harassment, 2
 retaliation, 3
 unlawful, 2
 due process, 64, 65

E

employment discrimination, iv, 15
 environment, 1
 academic, 1, 2, 4, 20, 21, 56, 65, 67
 employment, 1, 2, 3, 4, 7, 8, 9, 12, 14, 15,
 20, 21, 53, 56, 63, 65, 67

hostile, 4, 7, 8, 9, 12, 14, 15
 Equal Employment Opportunity Act, iv
 Equal Employment Opportunity
 Commission, iv, 5, 6, 8, 14, 17, 36, 40,
 41, 52, 53, 57, 58, 62, 65, 139, 140
 Equal Pay Act, 53

F

faculty, i, 2, 22, 23, 28
 Fair Employment Practices Agency, iv,
 42, 62
 false claims, 29
 federal laws, iv, 1, 3, 4, 10, 12, 17, 23, 40,
 52, 53, 54, 55, 58, 62, 64, 66, 68, 139,
 140, 141
 Federal Legislation
 Age Discrimination in Employment Act,
 11, 15, 54
 Americans With Disabilities Act, 56, 57, 58,
 140
 Civil Rights Act
 of 1964, 54
 of 1991, 58
 Equal Pay Act, 53
 First Amendment, 58, 59, 60, 61, 78, 123
 free speech, 61, 123, 124
 Immigration Reform and Control Act, 13
 Older Workers' Benefit Protection Act, 15
 Rehabilitation Act, 55
 Title IX of the Education Amendments, 55
 Title VII of the Civil Rights Act, 7, 8, 54
 FEPA. *See Fair Employment Practices Agency*
 final determination, 30, 31, 32
 First Amendment. *See Federal Legislation:*
 First Amendment
 freedom of speech. *See Federal*
Legislation:First Amendment

G

gender-based harassment, 14
 grievant, 6, 7, 9, 13, 24, 26, 29, 30, 31, 32,
 33, 34, 37, 38, 39, 40, 41, 42, 43, 44, 46,
 65, 66. *See affected party, complainant*

H

harassment, i, ii, iii, iv, v, vi, 1, 2, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 17, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 34, 36, 37, 39, 40, 41, 43, 44, 45, 46, 47, 48, 50, 52, 53, 60, 61, 62, 63, 64, 65, 66, 67, 68, 71, 72, 73, 78, 98, 99, 100, 101, 102, 103, 105, 106, 116, 117, 123, 124, 126, 135, 136

Harassment Resolution Officer, iv, 20

harassment resolution process, 64, 65

hostile environment, 4, 7, 8, 9, 12, 14, 15

I

Immigration Reform and Control Act, 13

impairment, 12, 16, 56

intervention, 21

Introduction, i

investigative process, 29

- analysis of results, 31
- evidence credibility, 30
- final determination, 31
- identify the issues, 29
- sanctions, 32
- sources of information, 29
- timeline, 30
- witness interviews, 30

L

legal issues, 52

N

NC Legislation, 62

- General Statutes, 63, 125

neutrality, 2

North Carolina laws, 1, 3, 11, 17, 52, 62, 63, 65, 66

notification, 24

- of resolution, 42
- to grievant, 43
- to respondent, 46

O

OAH. *See Office of Administrative Hearings*

OCR. *See Office for Civil Rights*

OEO. *See Office for Equal Opportunity*

OEO Director, 22, 23, 24, 29, 39, 40, 43, 64, 65, 66

Office for Civil Rights, v, 36, 40, 41, 52, 55, 140

Office for Equal Opportunity, i, iii, v, 21, 22, 23, 24, 25, 26, 27, 29, 34, 36, 37, 39, 48, 65, 78, 99, 121, 122, 123, 124, 126, 135, 136, 137

Office of Administrative Hearings, v, 42, 62, 63, 142

Office of Legal Affairs, iii, v, 32, 33, 44, 47, 61, 65, 66, 80, 81, 82, 93, 123, 138, 139

Office of State Personnel, v, 10, 14, 41, 42, 62, 63

OLA. *See Office of Legal Affairs*

Older Workers' Benefit Protection Act, 15

OSP. *See Office of State Personnel*

P

policies, 1, 16, 20, 24, 25, 26, 30, 40, 53, 55, 57, 67, 68, 137, 138

Policies. *See also Administrative Regulations*

- Computer Use Policy, 61, 70, 127
- Grievance Procedure for Faculty and EPA Employees, 77
- Grievance Procedure for Faculty and EPA Professionals, 68
- Grievance Procedures for Faculty and EPA Employees, 49
- Interpersonal Relationships Among Faculty, Staff, and Students, 68, 74
- Memorandum Regarding NC State University Computers and Pornography, 61, 69, 123
- Racial Harassment, 68, 71
- Sexual Harassment, 68, 72
- Uniform Student Grievance Procedure, 69, 95

policy issues, 67

pornography, 60, 123, 124

pregnancy, 15

prevention, 20, 21, 22, 23, 24, 27, 43, 45, 46, 48, 50, 64, 65, 66, 135, 136
 protected class, vi, 1, 3, 4, 5, 10, 11, 12, 13, 62
 age, vi, 3, 11, 15, 54, 64
 color, vi, 3, 10, 13, 54, 63
 creed, vi, 11, 62, 64
 disability, vi, 3, 10, 12, 15, 16, 56, 57, 58, 68
 national origin, vi, 3, 11, 13, 14, 54, 63, 68
 race, vi, 3, 10, 13, 21, 54, 63
 religion, vi, 3, 11, 14, 21, 54, 63
 sex, vi, 3, 10, 11, 14, 53, 54, 55, 63
 sexual orientation, vi, 3, 10, 12, 17, 21, 68, 98
 veteran status, vi, 3, 10, 12

Q

quid pro quo, 4, 8, 9, 12, 14

R

racial harassment, 68
 reasonable accommodation, 16, 17, 56, 57
 reasonable standard, 7, 8, 9, 33, 36, 56, 57, 65
 regulations, 16, 20, 24, 25, 26, 52, 53, 65, 67, 68, 138. *See Administrative Regulations, Policies*
 Rehabilitation Act, 55
 religious harassment, 68
 resolution process, 26, 39, 40, 41, 64
 process differences
 EPA employees, 41
 SPA employees, 41
 students, 40
 resources, 57, 135, 137, 139
 external
 Equal Employment Opportunity Commission, 139
 NC Dept. of Justice, 142
 NC Dept. of Labor, 142
 NC General Assembly, 142
 NC Office of State Personnel, 142
 Office for Civil Rights, 140
 other, 143
 sexual orientation discrimination, 17
 staff, i, 2, 22, 23, 28
 student, 16

State Board of Education, 141
 U.S. Dept. of Justice, 141
 U.S. Dept. of Labor, 141
 internal, 135
 grievant rights and responsibilities, 36
 respondent rights and responsibilities, 37
 web resources, 135
 webresources
 Office of Legal Affairs, 138
 witness rights and responsibilities, 38
 respondent, vi, 30, 31, 32, 33, 34, 36, 37, 39, 42, 43, 44, 46, 64, 65, 66
 retaliation, 4, 5, 25, 33, 36, 38, 65
 elements
 adverse action, 5
 causal connection, 5
 protected activity, 5
 rights and responsibilities, 1, 26, 66
 roles, 20, 21, 22, 24
 action, 24
 if you are accused, 25
 if you feel harassed, 24
 if you receive complaints, 26
 campus community members, 21
 director of harassment prevention and equity programs, 23
 intervention, 23
 prevention, 23
 supervisors/administrators, 22
 intervention, 22
 prevention, 22

S

sanctions, 32, 33, 34, 41, 43, 44, 45, 46, 47, 48, 49, 66
 action, 33
 education, 32
 restoration, 33
 status, 33
 sexual discrimination, 14
 sexual harassment, 9, 14, 68, 72, 124
 gender harassment, 15
 sexual assault, 15
 sexual bribery, 15
 sexual coercion, 15
 students, i, 2, 20, 22, 23, 33, 34, 40, 67
 supervisor, 8, 9, 10, 21, 22, 23, 24, 25, 28, 29, 43, 46, 65, 66, 67

T

terminology. *See definitions*

Title IX, 55

Title VII of the Civil Rights Act, 7, 8, 54

U

undue hardship, 14, 16, 57

university policy, 1, 2, 3, 12, 17, 23, 34,
49, 52, 66, 135, 137

unlawful discrimination, 3, 4

unlawful harassment, 7, 12, 27, 37, 38, 44,
47, 135

unwelcome conduct, 4, 5, 6, 7, 8, 10, 12,
14

unwelcome standard, 5

V

victim, 7, 8, 10, 17, 32

W

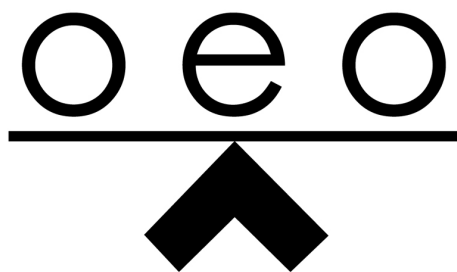
witness interviews, 24, 30, 34

confidentiality, 34

context, 34

discrepancies, 35

questioning, 35



office for **EQUAL**
OPPORTUNITY