



**PROCEDURES FOR REPORTS AGAINST EMPLOYEES**

**INVESTIGATING AND RESOLVING REPORTS OF SEXUAL AND GENDER-  
BASED HARASSMENT AND OTHER FORMS OF INTERPERSONAL VIOLENCE  
COMMITTED BY EMPLOYEES UNDER THE REGULATION**

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## 1. Introduction

1.1 East Carolina (the “University”) is committed to providing a safe and non- discriminatory environment for all members of the University community. The University prohibits Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual and Gender-Based Harassment, and related Retaliation (together, “Prohibited Conduct”). These forms of Prohibited Conduct are defined in the [University's Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence](#) (the “Regulation”). This Appendix identifies the procedures (the “Procedures”) the University follows when it receives a report alleging Prohibited Conduct by an Employee. The University uses these Procedures to investigate and adjudicate any such allegations against Employees found responsible for violating the Regulation.<sup>1</sup>

1.2 Please see Appendix A for Procedures the University follows when it receives a report alleging Prohibited Conduct by a Student. Please see paragraph 3.2 of the Regulation on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence for guidance on handling reports of prohibited conduct by other individuals.

## 2. Reporting

2.1 The University encourages anyone<sup>2</sup> who experiences or learns of Prohibited Conduct and requires Responsible Employees who become aware of an incident of Prohibited Conduct involving an Employee or Student to ***immediately*** report the incident to the University through the following reporting options:

2.1.1 By contacting the University’s Title IX Coordinator, by telephone, email, or in person during regular office hours:

LaKesha Alston Forbes, Title IX Coordinator  
Office for Equity and Diversity  
Old Cafeteria Building Suite G-406  
Phone: (252) 328-6804  
Email: oed@ecu.edu;

2.1.2 By filing an online complaint form with the Office of Equity and Diversity at <http://www.ecu.edu/oed/grievance-form.cfm>;

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<sup>1</sup> These Procedures should be read in conjunction with the Regulation. Capitalized terms used and not otherwise defined in these Procedures are defined in the Regulation. For purposes of these Procedures, the following definitions apply: (1) the “Title IX Coordinator” means the Title IX Coordinator, Senior Deputy Title IX Coordinator, and/or any of their respective trained designees; and (2) “Human Resources” means University Human Resources, and/or the Human Resources professional in a particular school/department/unit.

<sup>2</sup> Pursuant to University policy, certain University employees, called “Responsible Employees,” are *required* to report to the Title IX Coordinator all information disclosed to them about an incident of Prohibited Conduct. See [“Resource and Reporting Guide for Employees Reporting Incidents of Prohibited Conduct.”](#)

2.1.3 By filing an online complaint form with the Office of Student Rights and Responsibilities (“OSRR”) at <https://publicdocs.maxient.com/incidentreport.php?EastCarolinaUniv;or>

2.1.4 Through *ECU Cares*, the University’s reporting mechanism, at [www.ecu.edu/ecucares](http://www.ecu.edu/ecucares) or (252) 737-5555 and press #3. Anonymous reporting is permissible.

2.2 A Complainant, as defined in the Regulation, may make a report to the University to pursue Formal or Alternative Resolution under these Procedures or make a report to law enforcement; a Complainant may pursue both options (reporting to law enforcement and pursuing resolution through the University process), at the same time or sequentially. As set forth in the Regulation, a Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should contact law enforcement directly:

2.2.1 911 (for emergencies);

2.2.2 ECU Police Department ((252) 328-6787) (for non-emergencies);

2.2.3 Greenville Police Department ((252) 329-4315) (for non-emergencies); or

2.2.4 Pitt County Sheriff’s Office ((252) 902-2800)(for non-emergencies).

2.3 The University offers access to confidential resources for individuals who are unsure about whether to report Prohibited Conduct or are seeking counseling or other emotional support in addition to (or without) making a report to the University or law enforcement. The following guides identify confidential resources, both at the University and in the Greenville community, and further explains options for reporting Prohibited Conduct to the University and to law enforcement:

2.3.1 Students may refer to the [Resource and Reporting Guide for Student Reporting Incidents of Prohibited Conduct](#) and the [Resource and Reporting Guide for Students Accused of Incidents of Prohibited Conduct](#) (Appendixes A-1 and A-2);

2.3.2 Employees may refer to the [Resource and Reporting Guide for Employees Reporting Incidents of Prohibited Conduct](#) and [Resource and Reporting Guide for Employees Accused of Incidents of Prohibited Conduct](#) (Appendix B-1 and B-2);

2.3.3 Third Parties may refer to a Third Party Guide.

2.4 Complainants are entitled to receive information, assistance and a broad range of support and remedial measures regardless of whether they choose to pursue criminal and/or University disciplinary resolution of Prohibited Conduct. The Student and Employee Resource Guides outline these resources and remedial measures and describe how to request them.

2.5 A complaint may be filed at any time with the U.S. Equal Employment Opportunity Commission (<http://www.eeoc.gov>), the U.S. Department of Education’s Office of Civil Rights (<http://www2.ed.gov/about/offices/list/ocr/index.html>), or the North Carolina Civil Rights Division of the Office of Administrative Hearings (<http://www.oah.state.nc.us/civil>).

### **3. Expectations of Complainants and Respondents**

3.1 Pursuant to these Procedures, Complainants and Respondents can expect:

- 3.1.1 Equitable resolution of allegations of Prohibited Conduct as promptly as possible;
- 3.1.2 Privacy in accordance with the Regulation and any legal requirements;
- 3.1.3 Reasonably available interim protective measures and accommodations, as described in these Procedures and in the applicable Resource Guide;
- 3.1.4 Freedom from Retaliation for making a good faith report of Prohibited Conduct or participating in any proceeding under the Regulation;
- 3.1.5 The responsibility to refrain from Retaliation directed against any person for making a good faith report of Prohibited Conduct or participating in any proceeding under the Regulation;
- 3.1.6 The responsibility to provide truthful information in connection with any report, investigation, or resolution of Prohibited Conduct under the Regulation or these Procedures;
- 3.1.7 The opportunity to articulate concerns or issues about proceedings under the Regulation and these Procedures;
- 3.1.8 Timely notice of any meeting or proceeding at which the party's presence is contemplated by these Procedures;
- 3.1.9 The opportunity to choose an advisor, including the right to have that advisor attend any meeting or proceeding at which the party's presence is contemplated by these Procedures;
- 3.1.10 Written notice of an investigation, including notice of potential Regulation violations and the nature of the alleged Prohibited Conduct;
- 3.1.11 The opportunity to challenge the Investigator or any member of the Review Panel for bias or conflict of interest;
- 3.1.12 The opportunity to offer relevant information, present relevant evidence, and identify witnesses during an investigation;
- 3.1.13 The opportunity to be heard, orally and/or in writing, as to the determination of a Regulation violation and the imposition of any sanction(s);
- 3.1.14 Timely and equal access to any information that will be used during Alternative or Formal Resolution proceedings and related meetings;
- 3.1.15 Reasonable time to prepare any response contemplated by these Procedures;
- 3.1.16 Written notice of any extension of timeframes for good cause;
- 3.1.17 Written notice, as permitted and/or required by applicable law, of the outcome of any Formal Resolution proceedings, including the determination of a Policy violation, imposition of any sanction(s), and the rationale for each. The Complainant will only receive information regarding the imposition of any sanction(s) as it relates to the Complainant; and
- 3.1.18 To receive written notice of any appeal rights.

#### **4. Initial Assessment**

4.1 Upon receipt of a report of Prohibited Conduct committed by an Employee, the Title IX Coordinator in consultation with the University Behavioral Concerns Team and/or the Sexual Misconduct Response Team, will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. In this initial assessment, the Title IX Coordinator, directly or through a delegate, will:

- 4.1.1 Assess the safety and well-being of both parties and offer the University's immediate support and assistance;
- 4.1.2 Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
- 4.1.3 Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- 4.1.4 Inform the parties about University and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures;
- 4.1.5 Ensure that the parties receive a written explanation of all available resources and options and is offered the opportunity to meet to discuss those resources and options.
- 4.1.6 Inform the Complainant of the right to seek Alternative or Formal Resolution under these Procedures; ascertain the Complainant's expressed preference (if the Complainant has, at the time of the initial assessment, expressed a preference) for pursuing Alternative Resolution, Formal Resolution, or neither; and discuss with the Complainant any concerns or barriers to participating in any University investigation and resolution under these Procedures;
- 4.1.7 Explain the University's prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;
- 4.1.8 Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
- 4.1.9 Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and
- 4.1.10 Communicate with appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

4.2. The assigned investigator will ensure that the Respondent is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options with appropriate ECU officials.

## **5. Threat Assessment**

Following the initial assessment, the Title IX Coordinator will, when warranted, promptly forward to the University's Behavioral Concerns Team (the "UBCT") all information then known about the reported incident of Prohibited Conduct. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident.

### **5.1 University Behavioral Concerns Team**

The UBCT is established to receive, collect, consider, and advise upon information on behavior of concern exhibited by a student or group of students, faculty or staff member, or unaffiliated persons

on campus in accordance with Regulation 05.20.01, University Behavioral Concerns Team. UBCT will evaluate every report of Prohibited Conduct against an employee except where there is no ongoing behavior of concern or threat to evaluate and mitigate. The UBCT convenes (in person, by telephone, or by videoconference) weekly or as needed to review information received from the Title IX Coordinator, as described above, and to review new information as it becomes available. The UBCT may include select members of the Sexual Misconduct Response Team (“SMRT”), as necessary.

The UBCT has access to available University records, which may otherwise be confidential, including University disciplinary, academic and/or personnel records. The UBCT may seek additional information about the reported incident through any other legally permissible means.

## 5.2 Sexual Misconduct Response Team

The SMRT convenes (in person, by telephone, or by videoconference) weekly or as needed to review information received from a report of Prohibited Conduct against a student. The SMRT may include select members of the UBCT and, unless excused by the Title IX Coordinator, include, at a minimum: (1) the Title IX Coordinator or his/her designee, (2) the assigned investigator (3) a representative of the ECU Police Department (the “ECUPD Representative”), and (4) a representative from the Dean of Student’s Office. In addition, upon request by the Title IX Coordinator or the Vice Chancellor for Student Affairs, the SMRT may include a representative from Campus Living, the Counseling Center or the Victim Advocate, depending on the circumstances of the reported incident and the status of the Complainant and the Respondent.

## 5.3 Health and Safety Risk Assessment

5.3.1 Risk Factors. UBCT, in collaboration with the SMRT, if necessary, will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the Complainant or to any other member of the University community. The UBCT will make this determination based upon a review of the totality of the circumstances, and will be guided by a consideration of the following factors (the “Risk Factors”):

- 5.3.1.1 Whether the Respondent has prior relevant arrests, is the subject of prior reports and/or complaints related to any form of Prohibited Conduct, or has any history of violent behavior;
- 5.3.1.2 Whether the Respondent has a history of failing to comply with any University No-Contact Directive, other University protective measures, and/or any judicial protective order;
- 5.3.1.3 Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
- 5.3.1.4 Whether the Prohibited Conduct involved multiple Respondents;
- 5.3.1.5 Whether the Prohibited Conduct involved physical violence.  
“Physical violence” means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, pushing, and brandishing or using any weapon;
- 5.3.1.6 Whether the report reveals a pattern of Prohibited Conduct (e.g., by

- the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- 5.3.1.7 Whether the Prohibited Conduct was facilitated through the use of “date-rape” drugs or similar or intoxicants;
- 5.3.1.8 Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring;
- 5.3.1.9 Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18); and/or
- 5.3.1.10 Whether any other aggravating circumstances or signs of predatory behavior are present.

#### 5.4 University Actions Following Health and Safety Threat Assessment

Upon completion of the health and safety threat assessment, the Title IX Coordinator, in consultation with the UBCT, if necessary, will determine the course of action under these Procedures, which may include, without limitation, implementation of remedial and protective measures and Formal Resolution and/or Alternative Resolution (if available). Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Title IX Coordinator will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health and safety threat assessment, and the determinations of the UBCT and Title IX Coordinator will be documented and retained by the University in accordance with applicable law.

5.4.1 Where the Complainant Wishes to Pursue Formal Resolution. In *every* case in which a Complainant reports Prohibited Conduct and requests an investigation the Office for Equity and Diversity (OED) will promptly initiate Formal Resolution, outlined below.

5.4.2 Where the Complainant Requests Anonymity, and/or that an Investigation not be Pursued. If Complainant requests that personally-identifying information not be shared with the Respondent and/or that no investigation be pursued, the assigned investigator will explain to the Complainant that the University’s ability to meaningfully investigate and respond to a report may be limited, and that the University may not be able to honor such a request and still provide a safe and nondiscriminatory environment for all students and employees.

The Title IX Coordinator, in consultation with UBCT, as necessary, will consider the following factors in evaluating such request(s): (1) the totality of the circumstances; (2) the presence of any Risk Factors, as described in Section 5.3.1 of these Procedures; (3) the potential impact of such action(s) on the Complainant; (4) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (5) the existence of any information or evidence other than Complainant’s current testimony regarding the Prohibited Conduct; and (6) any other available and relevant information. The University will seek to honor the Complainant’s request(s) if it is possible to do so while also addressing the health and safety of the Complainant and the University community.

5.4.2.1 Determination that a Complainant’s Request(s) **Can** be Honored. Where the Title IX Coordinator determines that a Complainant’s request(s) (that personally-

identifying information not be shared with the Respondent, and/or that no investigation be pursued) can be honored, the University may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Alternative Resolution.

At any point, the Complainant may choose to pursue Alternative Resolution (if available) or Formal Resolution under these Procedures. The Title IX Coordinator also may request that a report be re-opened and pursued under these Procedures if any new or additional relevant information becomes available.

**5.4.2.2 Determination that a Complainant's Request(s) *Cannot* be Honored.** When the Title IX Coordinator determines that a Complainant's request(s) will not be honored because personally-identifying information must be shared with the Respondent, and/or that an investigation must be pursued because honoring the Complainant's request(s) would impede the University's ability to ensure the health and safety of the Complainant or other members of the University community, the Title IX Coordinator's actions may include, without limitation, (i) causing the Respondent's supervisor, in consultation with the relevant Human Resources representative, to impose a No- Contact Directive and/or to place the Respondent on pre-disciplinary or investigatory placement leave, with or without pay in accordance with applicable university policies; (ii) initiating an investigation and Formal Resolution under these Procedures; and/or (iii) arranging, imposing, or extending any other appropriate remedial and/or protective measures.

Where the Title IX Coordinator has determined that the University must proceed with an investigation despite a Complainant's request to the contrary, the University will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University's investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed directly or by implication. In such cases, the assigned investigator will notify the Complainant that the University intends to proceed with an investigation and that the Complainant is encouraged but not required to participate in the investigation or in any other actions undertaken by the University.

Where a Complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited. In such cases, the Title IX Coordinator may pursue the report if it is possible to do so without the Complainant's participation in the investigation or resolution (e.g., where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, sworn statements from the Complainant from other proceedings corroborating reports from other witnesses, physical evidence, or any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the University will only be able to respond to the report in limited

and general ways (i.e., through the provision of remedial and protective measures, targeted training or prevention programs, or other remedies tailored to the circumstances.)

### 5.5 Notice to Complainant and Respondent of University Actions

The assigned investigator will promptly inform the Complainant of any action(s) undertaken by the University to respond to a health or safety threat to the Complainant or the University community, including the decision to proceed with an investigation. The assigned investigator also will promptly inform the Respondent of any action(s) (including any interim remedial and protective measures) that will directly impact the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Dean of Students Office and/or the Vice Chancellor with supervisory responsibilities has the discretion to impose and/or modify any accommodations or protective measure based on all available information and in consultation with the Title IX Coordinator. The assigned investigator is available to meet with a Complainant or Respondent to address any concerns about the provision of interim measures. Interim remedial and protective measures will remain in effect through resolution of the report by the appropriate Vice Chancellor, unless new circumstances arise which warrant reconsideration of the protective measures and accommodations prior to Vice Chancellor Review and/or the Hearing Panel Hearing.

## 6. University Resolution

These Procedures offer two forms of resolution of reports of Prohibited Conduct against an employee (EHRA Faculty, SHRA and CSS Staff, and EHRA Non-Faculty): (1) Alternative Resolution (as described in Section 6.1 of these Procedures), which includes a variety of informal options for resolving reports, and (2) Formal Resolution, which involves an investigation, sanction (if applicable), and a review by the appropriate Vice Chancellor and Hearing Panel (as described in Section 6.2 of these Procedures).

Any complaints of Prohibited Conduct against a SHRA, CSS or EHRA Non-Faculty will be processed in accordance with these procedures. With respect to EHRA Faculty employees, these Procedures **shall supersede** the *ECU Faculty Manual* with respect to investigation and findings regarding any complaints of Prohibited Conduct. Any disciplinary action taken against an EHRA Faculty employee as a result of a complaint of Prohibited Conduct, will be addressed and may be appealed through the processes described in the *ECU Faculty Manual*, as applicable.

An SHRA employee may choose to file any complaints of Sexual and Gender based Harassment, Sexual Assault, Offensive Touching, Sexual Exploitation and related retaliation in accordance with ECU's Mediation and Grievance Procedure for SHRA Employees (ECU Regulation 06.35.02). In the event the complaint is filed within fifteen (15) calendar days after the incident covered by ECU Regulation 06.35.02 and the SHRA employee wishes to retain their appeal rights under ECU Regulation 06.35.02, the SHRA employee may pursue remedies provided in ECU Regulation 06.35.02 in addition to these procedures. ECU Regulation 06.35.02 does not cover Intimate Partner Violence, Stalking, Dating or Domestic Violence, Complicity and related Retaliation.

Any complaints of Prohibited Conduct brought by a SHRA employee not covered by ECU Regulation 06.35.02 or not filed within 15 calendar days of the incident will be processed solely according to these Procedures.

## 6.1 Alternative Resolution

The Complainant may seek Alternative Resolution in place of an investigation and Formal Resolution, if the Title IX Coordinator approves. The University, through the Title IX Coordinator, has the discretion to determine the nature of the reported conduct is not appropriate for Alternative Resolution, to limit the type of Alternative Resolution that may be appropriate in a specific case and, pursuant to Section V.C of these Procedures, to refer a report for Formal Resolution at any time. In addition, Alternative Resolution may not be available where the UBCT has determined that one or more of the Risk Factors listed in Section 5.3.1 of these Procedures is present. **Forms of Alternative Resolution that involve face-to-face meetings between the Complainant and the Respondent, such as mediation, are not available in cases involving Sexual Assault, Sexual Harassment where there is a power differential between the Complainant and Respondent, and related Retaliation. Contact the Title IX Coordinator for information about potential Alternative Resolution options in a particular case.**

If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Alternative Resolution, the terms of the agreement are implemented and the matter is resolved and closed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if a Respondent fails to comply with the terms of the Alternative Resolution, the matter may be referred for an investigation and Formal Resolution under these Procedures.

The Office for Equity and Diversity will maintain records of all reports and conduct referred for Alternative Resolution, which typically will be completed within thirty (30) business days from the date the Complainant elects to pursue an alternative resolution.

## 6.2 Formal Resolution

Formal Resolution may be commenced when:

- A Complainant reports that an Employee has engaged in one or more instances of Prohibited Conduct and requests an investigation, either at the time of the report or at some time thereafter; or
- Attempts at Alternative Resolution fail or do not resolve a reported incident of Prohibited Conduct and, in the Title IX Coordinator's discretion, an investigation of the report of Prohibited Conduct is required; or
- At the conclusion of the threat assessment process described in Section 5 of these Procedures, the Title IX Coordinator or the Chancellor has determined, based upon a review of the totality of the circumstances and guided by a consideration of the Risk Factors, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant's request that personally identifying information not be shared with the Respondent, and/or that no investigation be pursued.

**6.2.1 Investigation.** Whenever Formal Resolution is commenced, the assigned investigator will designate one or more Investigators from the University's Office for Equity and Diversity and/or an experienced external investigator to conduct a prompt, thorough, fair, and impartial investigation. All Investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the University community while promoting accountability and honoring the rights of Complainants and Respondents.

**6.2.1.1 Notice of Investigation.** The Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation or as soon thereafter as their identity is known. Such notice will (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location, and nature of the alleged Prohibited Conduct; (3) identify potential Policy violation(s); (4) identify the Investigator; (5) include information about what the parties can expect under the Policy and these Procedures; (6) explain the prohibition against Retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest; and (9) provide a copy of the Policy and these Procedures.

**6.2.1.2 Other Forms of Discriminatory and/or Harassing Conduct.** If a report of Prohibited Conduct also implicates other forms of discriminatory and/or harassing conduct prohibited by the University's Notice of Nondiscrimination and Affirmative Action policy, OED will evaluate all reported allegations to determine whether the alleged Prohibited Conduct and the alleged Notice of Nondiscrimination and Affirmative Action policy and/or Regulation on Responding to Complaints of Prohibited Discrimination, Harassment and/or Related Retaliation ("PDHR Regulation") violation(s) may be appropriately investigated together without unduly delaying the resolution of the report of Prohibited Conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (i.e., the Notice of Nondiscrimination and Affirmative Action policy and/or the PDHR Regulation), but the investigation and resolution will be conducted in accordance with these Procedures.

**6.2.1.3 Presumption of Non-Responsibility and Participation by the Parties.** The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator and/or Review Panel conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Regulation. All employee Respondents and witness(es) are strongly encouraged to participate in an investigation; Employees may be required to participate, to the extent allowed by law.

**6.2.1.4 Overview of Investigation.** During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, and to identify witnesses who may have relevant information. The Investigator will notify

and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather, consistent with applicable policy and law, other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).

6.2.1.5 Advisors. Throughout the investigation and resolution process, each party has the right to choose and consult with an advisor. The advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings, except and unless mandated by applicable UNC policy or law.

6.2.1.6 Prior or Subsequent Conduct. Relevant prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of the Notice of Nondiscrimination and Affirmative Action policy and/or other University policy, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information.

6.2.1.7 Prior Sexual History. The sexual history of a Complainant or Respondent will not be used to prove character or reputation. Evidence related to the prior sexual history of either of the parties with other persons is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances. For example, if the existence of Affirmative Consent, as defined in the regulation, is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether Affirmative Consent was sought and given during the incident in question. However, even in the context of a relationship, Affirmative Consent to one sexual act does not, by itself, constitute Affirmative Consent to another sexual act, and Affirmative Consent on one occasion does not, by itself, constitute Affirmative Consent on a subsequent occasion. In addition, prior sexual history between the parties may be relevant to explain the presence of a physical injury or to help resolve another question raised by the complaint. The Investigator will determine the relevance of this information and both

parties will be informed if evidence of prior sexual history, is deemed relevant as permitted or required by applicable law.

6.2.1.8 Relevance. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of personal opinion or statements as to any party's general reputation for any character trait.

6.2.1.9 Site Visit(s). The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.

6.2.1.10 Expert Consultation(s). The Investigator may consult medical, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

6.2.1.11 Coordination with Law Enforcement. The Investigator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the written request of law enforcement, the Investigator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will promptly resume the University investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

6.2.1.12 Timing of Investigation. The investigation typically will be completed with issuance of a report and notice by the Title IX Coordinator or her/his designee within forty-five (45) calendar days of the issuance of the Notice of Investigation. This timeframe may be extended for good cause, as provided in Section 7 below. The Investigator will notify the parties in writing of any extension of this timeframe and the reason for such extension. Any extension and the reason for the extension, will be shared with the parties in writing. The assigned investigator will contact the Complainant and Respondent with a status update of the investigation approximately forty-five (45) calendar days from the issuance of the Notice of Investigation (Section 6.2.1.1) If the investigation extends beyond sixty (60) calendar days, the Complainant and Respondent will be provided a status update at sixty (60) calendar days and then at regular intervals every thirty (30) calendar days thereafter.

6.2.1.13 Final Investigation Report. The Investigator will prepare a Final Investigation Report, which will include a finding as to whether there is sufficient evidence, by a Preponderance of the Evidence, of a violation of the Regulation (and, where applicable, the Notice of Nondiscrimination and Affirmative Action policy). In reaching this finding, the Investigator will consult with the Office of University Counsel. The assigned investigator will notify both parties, simultaneously, in a Notice of Findings and submit the Final Investigation Report to the appropriate Vice Chancellor for appropriate action.

6.2.1.14 Party Response/Impact and Mitigation Statements. Each party has an opportunity to provide the Title IX coordinator with a response to the Notice of Findings. Where there is a finding of responsibility on one or more of the allegations, both parties may also submit a statement to the Title IX Coordinator for consideration by the appropriate Vice Chancellor in determining an appropriate sanction. The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. All such responses and statements, if any, must be delivered to the Title IX Coordinator within 5 calendar days of issuance of the Notice of Findings. The Title IX Coordinator will provide all such responses and statement(s), if any, with the Final Investigation Report and the parties' other written submissions to the Vice Chancellor.

6.2.2 Acceptance of Responsibility. The Respondent may, at any time, elect to resolve the Formal Resolution process by accepting responsibility for the Prohibited Conduct, in which case the Title IX Coordinator will refer the matter to the Appropriate Vice Chancellor for imposition of sanction(s). The Complainant will be notified and both parties will be given an opportunity to provide Mitigation/Impact Statements as described in 6.2.14 to the Title IX Coordinator for submission to the appropriate Vice Chancellor for consideration of sanctions.

6.2.3. Vice Chancellor Review; Sanction; Notice of Outcome.

6.2.3.1 Vice Chancellor Review of Final Investigation Report and Party Statements.

Upon receipt of the Final Investigation Report and any response and/or mitigation/impact statements, the appropriate Vice Chancellor will have seven (7) calendar days to review all the foregoing information, affirm or reject the investigation findings regarding responsibility under the Regulation and, if applicable, determine the sanction(s) in accordance with the disciplinary procedures applicable to the Respondent.

6.2.3.2 Sanctions. Where disciplinary action is recommended or deemed appropriate by the Vice Chancellor, such action may include one or more of the following: training, progressive disciplinary action, restrictions on interactions with students or other members of the ECU community, No-Contact Directive, transfer of position, removal of administrative appointment, demotion, suspension without pay, and discharge from employment.

In determining the appropriate sanction(s), the appropriate Vice Chancellor will be guided by a number of considerations, including:

- 6.2.3.2.1 The severity, persistence or pervasiveness of the Prohibited Conduct;
- 6.2.3.2.2 The nature or violence (if applicable) of the Prohibited Conduct;
- 6.2.3.2.3 The impact of the Prohibited Conduct on the Complainant;
- 6.2.3.2.4 The impact or implications of the Prohibited Conduct within the University community;

- 6.2.3.2.5 Prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history to the extent allowed by applicable law and policy, at the University or elsewhere, and any criminal convictions;
- 6.2.3.2.6 Whether the Respondent has accepted responsibility for the Prohibited Conduct;
- 6.2.3.2.7 The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning;
- 6.2.3.2.8 The amount of time that elapsed between the date of the Prohibited Conduct and the date of the Complainant's report; and
- 6.2.3.2.9 Any other mitigating, aggravating, or compelling factors.

The Vice Chancellor will consult with other administrators as needed, including but not limited to Human Resources and the Title IX Coordinator, to ensure that any disciplinary action is appropriate for the violation and consistent with the disciplinary procedures applicable to the Respondent. The Vice Chancellor will also determine any other appropriate actions, which may include (1) imposing or extending a No-Contact Directive; (2) imposing or extending academic, University housing and/or University employment modifications; (3) other restorative remedies for the Respondent, such as formal referral to the Employee Assistance Program and education and training that encourage the Respondent to develop insight about the Prohibited Conduct, learn about the impact of the Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Prohibited Conduct in the future (including mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); (4) imposing or extending increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; (5) arranging for conducting targeted or broad-based educational programming or training for relevant persons or groups; and/or (6) imposing any other remedial or protective measures that are tailored to achieve the goals of the Regulation.

Any sanction or combination of sanctions imposed upon a Respondent will be documented in the Respondent's personnel file. Nothing in these Procedures prevents the Vice Chancellor from imposing disciplinary action against a Respondent where the Final Investigation Report demonstrates that the Respondent engaged in other conduct prohibited by the University, regardless of whether the Respondent has been found responsible for violating the Regulation.

6.2.3.3 Notice to Parties of Final Investigation Conclusion. The Vice Chancellor will notify the Complainant, Respondent and Title IX Coordinator, simultaneously, in writing (which may include email) of the final outcome of the investigation (the "Final Outcome Letter"). The Final Outcome Letter shall include the name of the Respondent; the violation(s) of the Policy (and, if applicable, the Notice of Nondiscrimination and Affirmative Action policy) for which the Respondent was found responsible or not responsible, the sanction(s) (if applicable) imposed against the Respondent but only as they relate to the Complainant. The rationale for the result and any sanction(s) imposed will be included in the Final Outcome Letter when required by law. The Final Outcome Letter may also identify protective

measures implemented with respect to the Respondent or the broader University community. The Final Outcome Letter will not disclose any remedial measures provided to the Complainant, except as may be imposed on the Respondent. Any such remedial measures will be shortly thereafter shared with the Complainant by separate communication.

The University does not impose restrictions on the parties regarding re-disclosure of the incident, their participation in proceedings under these Procedures, or the Final Outcome Letter, provided that the manner in which any disclosure is made must not be disruptive to the educational and/or work environment. Any party may disclose information about the incident, participation in the proceeding, and the Final Outcome Letter to and in connection with consultation with his or her own legal counsel; otherwise, employees and agents of the university may disclose confidential student records and confidential personnel information about others only to the extent allowed by law.

The Vice Chancellor's issuance of the Final Outcome Letter concludes the investigation process. Subsequent appeals and challenges to findings are addressed below.

#### 6.2.4 Contesting Finding(s) of Responsibility or No Responsibility

6.2.4.1 Finding(s) of Responsibility. Upon issuance of Final Outcome Letter in which the Vice Chancellor states her/his determination that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the matter with regard to the allegation of Prohibited Conduct is closed unless the Respondent contests one or more of the findings by submitting to the Title IX Coordinator a written statement within seven (7) calendar days of the issuance of the Final Outcome Letter explaining why the Respondent contests such finding(s). The Title IX Coordinator will ensure that the Complainant has an opportunity to review and respond in writing to any such statement within a reasonable timeframe not to exceed seven (7) calendar days from receipt of the Respondent's letter contesting the findings. The Title IX Coordinator will provide the Final Investigation Report, Final Outcome Letter, together with any statements by the parties, to the Review Panel for further proceedings as outlined in Section 6.2.5 of these Procedures.

6.2.4.2 Contesting Finding(s) of No Responsibility. If the Vice Chancellor issues as Final Outcome Letter stating her/his determination that there is insufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the matter is closed unless the Complainant contests the finding(s) by submitting to the Title IX Coordinator a written statement within seven (7) calendar days of the issuance of the Notice of Outcome (explaining why the Complainant contests such finding(s)). In the event the Complainant timely files a statement contesting the finding(s), the Title IX Coordinator will (i) ensure that the Respondent has an opportunity to review and respond in writing to any such statement within a reasonable timeframe not to exceed seven (7) calendar days from receipt of the Complainant's letter contesting the findings; and (ii) provide the Final Investigation

Report, Final Outcome Letter, together with any statements and responses by the parties, to the Hearing Panel for further proceedings as outlined in Section 6.2.5 of these Procedures.

6.2.5 Hearing Panel Hearing. If either of the parties contests the Vice Chancellor's finding(s) of responsibility (or no responsibility) for an alleged violation of the Policy, a Hearing Panel appointed by the Title IX Coordinator will hold a Hearing to review the Investigator's and/or Vice Chancellor's findings and develop a recommendation to the Chancellor as to (1) whether the concerns stated by the contesting party raise substantial doubt as to the thoroughness, fairness, and/or impartiality of the investigation and (2) whether there is sufficient evidence to support the Investigator's finding(s) by a Preponderance of the Evidence.

The Title IX Coordinator will establish a standing pool of trained members of the University community, including CSS, SHRA, EHRA and EHRA faculty employees and, at the discretion of the Title IX Coordinator, external professionals with experience adjudicating cases of Prohibited Conduct. The Title IX Coordinator will include in the pool EHRA faculty members from nominees drawn from the Faculty Appellate Committee members. If the Complainant and Respondent are both employees who are not in the same employment category (EHRA Faculty, EHRA non-faculty, SHRA, CSS), the Title IX Coordinator will establish the Hearing Panel by appointing from the pool: one member from the Complainant's employment category; one member from the Respondent's employment category; and an additional member of a separate employment status to serve as a Hearing Chair. .

6.2.5.1 Impartiality and Conflicts of Interest. All persons serving on any Hearing Panel (or as the Hearing Chair) must be impartial and free from actual bias and conflict of interest. Each party will be given an opportunity to present any contention he or she may have that a Hearing Panel member fails to meet the obligations regarding impartiality, bias or conflict of interest and to request removal of that member. Hearing Panel members may be removed by the Hearing Chair, a majority of the remaining Hearing Panel members, or the hearing advisor/administrator appointed by the Title IX Coordinator to advise the Hearing Panel in the event he/she/they conclude on their own motion or in response to a party's request that evidence demonstrates (i) the Hearing Panel member cannot be impartial, (ii) that a conflict of interest is known and the Hearing Panel member has not recused himself/herself, or (iii) when it is clear that the Hearing Panel Member is unable or unwilling to appropriately apply the provisions of the Regulation and these Procedures.

6.2.5.2 Notice and Timing of Hearing. Typically, a Hearing will be held within ten (10) business days from the date the parties are provided the Notice of Finding. OED will notify the parties in writing of the date, time, and location of the Hearing; the names of the Hearing Panel members and the Hearing Chair; and how to challenge participation by any member of the Hearing Panel or the Hearing Chair for bias or conflict of interest. The Notice of Hearing will be issued at least five (5) business days from the date of the Hearing, subject to extension for good cause at the discretion of the Title IX Coordinator. Good cause for extension may include the

unavailability of the parties, the timing of semester breaks or University holidays, or other extenuating circumstances. Any extension, including the reason for the extension, will be shared with the parties in writing by OED provided that the request to do so is based on compelling circumstances or an emergency and communicated to OED at least 2 business days prior to the time of the Hearing. The other party will be notified of the extension request and allowed to object, in writing, to the request.

6.2.5.3 Hearing Format. The hearing is an opportunity for the parties to address the Hearing Panel, in person, to raise any concerns about the thoroughness, fairness, and/or impartiality of the investigation and whether there is sufficient evidence to support the finding(s) by a Preponderance of the Evidence. The parties may address any information related to the investigation, supplemental statements submitted in response to the Investigation, and any impact and mitigation statements if the Hearing enters the sanction phase. Each party has the opportunity to be heard, to identify witnesses for the Hearing Panel's consideration, and to respond to any questions of the Hearing Panel. The parties may not directly question each another or any witness, although they may proffer questions to the Chair to pose to the Investigator, the parties, and/or any witnesses. Upon receipt of proffered questions, the Chair will determine whether each question is relevant to the matter(s) at issue, is impermissible in the proceeding in accordance with this and other relevant ECU policies, or is unnecessarily duplicative. This determination is left solely to the Chair. The Chair will strive to pose each relevant question exactly as written by the party that proposed it. When the Chair amends or declines to ask a question, it shall make a good faith effort to revise or develop a new question that seeks the information the proffering party is seeking, to the extent such party is seeking, to the extent such information is eligible to be considered in the hearing. The party posing the question will be afforded an opportunity for follow-up questions subject to the relevancy review conducted by the Chair. A typical Hearing may include brief opening remarks by the Complainant and/or Respondent, with follow-up questions posed by the Hearing Panel; information presented by the Investigator or witnesses deemed relevant by the Hearing Panel, with follow-up questions by the Hearing Panel of the Investigator or witnesses; and brief concluding remarks by the Complainant and/or Respondent. The Hearing Chair has the discretion to adjust the specific Hearing format to the extent adjustments are necessary to ensure a fair and impartial hearing or as requested by one or both of the parties.

#### 6.2.5.4 Participation in Hearing

6.2.5.4.1 Parties. Both the Complainant and the Respondent have a right to be present at the Hearing. Either party may request alternative methods for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Hearing Chair at least two (2) business days prior to the Hearing.

If, despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the Hearing may proceed if the Chair determines there is no

good cause for postponement. Neither party is required to participate in the Hearing in order for the Hearing to proceed.

6.2.5.4.2 Investigator or other witnesses. The Hearing Panel may request the presence of the Investigator or any other witness it deems necessary to its determination. The parties may also request the presence of any witness they deem relevant to the determination by the Hearing Panel. The parties must provide, to each party, the Chair, and the Title IX Coordinator, the names of the witnesses each party deems relevant to the determination three (3) business days in advance of the hearing so that the Hearing Panel can request participation of those witnesses. The Hearing Panel may decline to hear from witnesses where it, after consulting with the parties about the purpose of the testimony of the witness, concludes that all the information the witness may provide is irrelevant to its review or is unhelpfully duplicative.

6.2.5.4.3 Advisors. Both the Complainant and the Respondent have the right to be accompanied at the Hearing by an advisor of their choosing. While the advisor may provide support and advice to a party at the Hearing, the advisor may not in any manner disrupt the Hearing; or speak on behalf of the party or otherwise participate in the Hearing, except to the extent required by law. The University reserves the right to remove any individual whose actions are disruptive to the proceedings.

6.2.5.5 Recommendation by the Hearing Panel. Where either of the parties has contested the finding(s) of responsibility, the members of the Hearing Panel will, at the conclusion of the Hearing, determine, by majority vote, (1) whether the concern(s) stated by the contesting party raise substantial doubt as to the thoroughness, fairness, and/or impartiality of the investigation and/or (2) whether there is sufficient evidence to support the Investigator's finding(s) by a Preponderance of the Evidence. The Hearing Panel's decision must be based solely on the evidence presented at the hearing, including but not limited to testimony from the investigator and their report.

If the Hearing Panel finds that concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation, it will remand the matter to the Title IX Coordinator with recommendations for supplemental investigation or other action. The recommendations may include guidance regarding the scope of information to be further investigated and any appropriate stipulations, including the appointment of a new Investigator.

If the Hearing Panel finds no cause for substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation, but determines there is insufficient evidence to support the Investigator's finding, it may recommend remand of the matter for further investigation or reject the Investigator's finding(s) and make recommendations for alternative finding(s), which will be forwarded to the Chancellor for final review.

If the Hearing Panel finds no cause for substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation *and* affirms that there is sufficient

evidence to support a finding of responsibility by a Preponderance of the Evidence, such recommendation will be forwarded to the Chancellor for final review to either affirm or reject the Hearing Panel recommendation.

If the Hearing Panel finds no cause for substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation *and* recommends affirming a finding of no responsibility, the Hearing Panel will make a recommendation to the Chancellor that matter will be considered resolved and that the investigation be closed.

**6.2.5.6 Notice of Hearing Panel Determination.** The Hearing Chair will notify OED promptly and OED will notify in writing (which may include email) the Complainant, the Respondent, the Title IX Coordinator, the Chancellor, and the appropriate Vice Chancellor in the Respondent's supervisory chain of the Hearing Panel's recommendation within five (5) business days of the Hearing. Regardless of the recommendation, Title IX Coordinator may nevertheless ensure that remedial measures remain in effect to support either party, as required.

**6.2.5.7 Chancellor Review.** Any decision made by the Chancellor pursuant to 6.2.5.5 with respect to determination(s) of the validity of the investigation and findings under the Regulation are final as to the University appeal or grievance. Sanctions for Prohibited Conduct may be appealed as allowed by policies applicable to the Respondent. Nothing in these Procedures abrogates post-adjudication rights as provided by state and federal law (i.e., North Carolina Civil Rights Division of the Office of Administrative Hearings; the Office for Civil Rights; and the Equal Opportunity Employment Commission).

## **7. Extension of Timelines for Good Cause**

The University will typically investigate and come to an initial decision regarding sanctions, if any, within 60 calendar days. However, any deadline or timeframe for a particular portion of these Procedures may be extended by the University for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. In the event an extension is necessary, the Investigator, Title IX Coordinator, the Director of OSRR or the Vice Chancellor for Student Affairs will notify the parties in writing of any extension of a deadline or timeframe and the reason for such extension.

## **8. Vice Chancellor Substitution**

For the purposes of these procedures, all references to the appropriate Vice Chancellor mean the Vice Chancellor with supervisory responsibility over the Respondent or, in the Chancellor's Division, the supervisor that the Chancellor determines to be appropriate, such as the Director of Athletics, Chief of Staff, Chief Audit Officer or Vice Chancellor for Legal Affairs. However, the Chancellor may assume this responsibility or designate another Vice Chancellor in the event the Vice Chancellor with supervisory authority over the Respondent is unavailable; is a witness in the investigation; has a conflict

of interest; or when the Chancellor determines that a substitution is necessary to ensure a fair and timely review. In the event the Chancellor assumes the role of the appropriate Vice Chancellor, another Vice Chancellor will be appointed to assume responsibilities of the Chancellor under these procedures.

## **9. Records Retention**

ECU will maintain the investigation record as a confidential personnel record in accordance with N.C. General Statute Chapter 126 and/or a confidential student record in accordance with the Family Educational Rights and Privacy Act (FERPA). The information contained in the investigation record generally will not be released without the written and dated consent of the employee or student identified in the record. However, investigation records may be shared with third parties to the extent allowed under law.