

Rethinking Civil Rights at UNC Charlotte: How a New Office is Simplifying Reports, Support, and Response

October 5, 2022

Dr. Michelle Reinken, Director of Civil Rights and Title IX
André Lindsay, Associate General Counsel
Sarah Edwards, Senior Associate General Counsel



Agenda

- Legal Framework
 - Employees
 - Students
- Implementation
 - University Policies
 - Guiding Principles
 - Scenarios
- Q/A



Legal Framework



Civil Rights Laws - Employment

- **Title VII of the Civil Rights Act of 1964 (Title VII)**
 - Prohibits discrimination or harassment based on sex (including sexual orientation or transgender status), race, color, creed, national origin or religion
 - Pregnancy Discrimination Act - prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions
- **The Americans with Disabilities Act of 1990 (as amended in 2008 (ADAAA))**
 - Prohibits discrimination or harassment based on disability and requires employers to provide certain *reasonable accommodations* to employees and job applicants
- **Age Discrimination in Employment Act of 1967 (ADEA)**
 - Protects individuals who are 40 years of age or older from employment discrimination or harassment based on age
- **The Genetic Information Nondiscrimination Act of 2008 (GINA)**
 - Prohibits discrimination in employment based on genetic information



Civil Rights Laws - Employment

- The civil rights laws apply to:
 - Employees (regardless of status as P/T or F/T, permanent, temporary, or seasonal)
 - Student employees
- University policy extends protections to:
 - Interns
 - Volunteers
 - Contractors
- Civil rights laws enforced by EEOC
- Retaliation is strictly prohibited

This does not include charges filed with state or local Fair Employment Practices Agencies.

	Y 006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Total Charges	5,768	82,792	95,402	93,277	99,922	99,947	99,412	93,727	88,778	89,385	91,503	84,254	76,418	72,675	67,448	61,331
Race	7,238 15.9%	30,510 37.0%	33,937 35.6%	33,579 36.0%	35,890 35.9%	35,395 35.4%	33,512 33.7%	33,068 35.3%	31,073 35.0%	31,027 34.7%	32,309 35.3%	28,528 33.9%	24,600 32.2%	23,976 33.0%	22,064 32.7%	20,908 34.1%
Sex	3,247 10.7%	24,826 30.1%	28,372 29.7%	28,028 30.0%	29,029 29.1%	28,534 28.5%	30,356 30.5%	27,687 29.5%	26,027 29.3%	26,396 29.5%	26,934 29.4%	25,605 30.4%	24,655 32.3%	23,532 32.4%	21,398 31.7%	18,762 30.6%
National Origin	8,327 1.0%	9,396 11.4%	10,601 11.1%	11,134 11.9%	11,304 11.3%	11,833 11.8%	10,883 10.9%	10,642 11.4%	9,579 10.8%	9,438 10.6%	9,840 10.8%	8,299 9.8%	7,106 9.3%	7,009 9.6%	6,377 9.5%	6,213 10.1%
Religion	2,541 3.4%	2,880 3.5%	3,273 3.4%	3,386 3.6%	3,790 3.8%	4,151 4.2%	3,811 3.8%	3,721 4.0%	3,549 4.0%	3,502 3.9%	3,825 4.2%	3,436 4.1%	2,859 3.7%	2,725 3.7%	2,404 3.6%	2,111 3.4%
Color	1,241 1.6%	1,735 2.1%	2,698 2.8%	2,943 3.2%	2,780 2.8%	2,832 2.8%	2,662 2.7%	3,146 3.4%	2,756 3.1%	2,833 3.2%	3,102 3.4%	3,240 3.8%	3,166 4.1%	3,415 4.7%	3,562 5.3%	3,516 5.7%
Retaliation - All Statutes	2,555 9.8%	26,663 32.3%	32,690 34.3%	33,613 36.0%	36,258 36.3%	37,334 37.4%	37,836 38.1%	38,539 41.1%	37,955 42.8%	39,757 44.5%	42,018 45.9%	41,097 48.8%	39,469 51.6%	39,110 53.8%	37,632 55.8%	34,332 56.0%
Retaliation - Title VII only	9,560 15.8%	23,371 28.3%	28,698 30.1%	28,948 31.0%	30,948 31.0%	31,429 31.4%	31,208 31.4%	31,478 33.6%	30,771 34.7%	31,893 35.7%	33,082 36.2%	32,023 38.0%	30,556 40.0%	30,117 41.4%	27,997 41.5%	25,121 41.0%
Age	6,548 11.8%	19,103 23.2%	24,582 25.8%	22,778 24.4%	23,264 23.3%	23,465 23.5%	22,857 23.0%	21,396 22.8%	20,588 23.2%	20,144 22.5%	20,857 22.8%	18,376 21.8%	16,911 22.1%	15,573 21.4%	14,183 21%	12,965 21.1%
Disability	5,575 10.6%	17,734 21.4%	19,453 20.4%	21,451 23.0%	25,165 25.2%	25,742 25.8%	26,379 26.5%	25,957 27.7%	25,369 28.6%	26,968 30.2%	28,073 30.7%	26,838 31.9%	24,605 32.2%	24,238 33.4%	24,324 36.1%	22,843 37.2%
Equal Pay Act	861 1.1%	818 1.0%	954 1.0%	942 1.0%	1,044 1.0%	919 0.9%	1,082 1.1%	1,019 1.1%	938 1.1%	973 1.1%	1,075 1.2%	996 1.2%	1,066 1.4%	1,117 1.5%	980 1.5%	885 1.4%
GINA					201 0.2%	245 0.2%	280 0.3%	333 0.4%	333 0.4%	257 0.3%	238 0.3%	206 0.2%	220 0.3%	209 0.3%	440 0.7%	242 0.4%



Reasonable Accommodation under the Civil Rights Law

- Bona Fide Religious Beliefs (Title VII) – Accommodation of sincerely held religious beliefs/practices that conflict with work policies or requirements, unless it poses an undue hardship
 - Examples may include schedule changes, job reassignment, changes to dress code, *etc.*
- Qualified Individuals with Disabilities (ADA) – Reasonably accommodate qualified individuals with disabilities, unless it poses an undue hardship or direct threat
 - Examples may include modifications or adjustments to the work environment, or to the manner or circumstances under which the job is customarily performed



Discriminatory Harassment

- It is unlawful to harass a person because of their protected status or marriage to or association with an individual of a protected status
- Harassment can include, for example, offensive remarks about a person's age, disability, race, national origin, etc.
- The harasser can be the victim's supervisor, a supervisor in another area, or an influential co-worker
- Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being terminated or demoted)

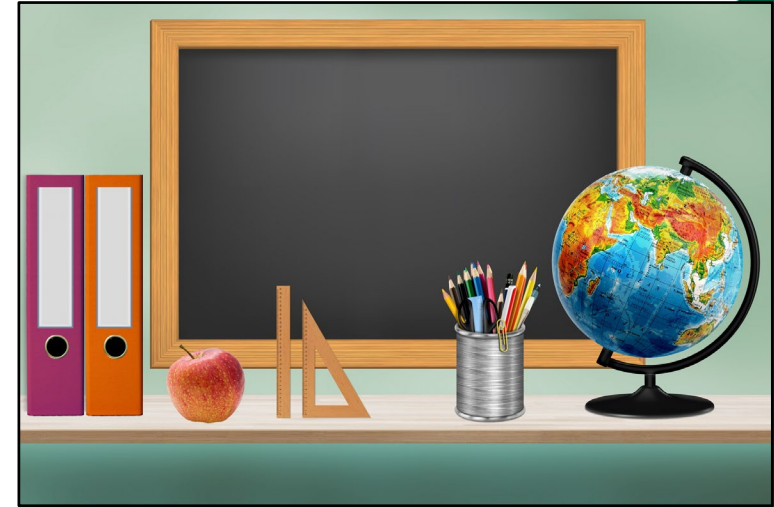


Hostile Work Environment

- Can be about any protected characteristic (sex, race, religion, national origin, disability, age, pregnancy, and more)
- This conduct can occur between or among anyone, regardless of position (can be the victim's supervisor, a co-worker, a student, or someone who is not an employee or student of the university, such as a volunteer or contractor)
- HWE is conduct so severe or pervasive that it creates an offensive and unpleasant working atmosphere that affects the victim's ability to do the job
- Can include comments, conduct, jokes, e-mails, images, physical touching, and more
- The harasser's intent is irrelevant—it is all about perception!

Relevant Education Laws

- **Title IX** (1972) is a federal law that prohibits sex discrimination in education programs or activities
 - Includes sexual orientation, gender identity, pregnancy, etc.
- **Title VI** (1964) is a federal law that prohibits discrimination based on race, color, or national origin in education programs or activities
- **Americans with Disabilities Act (ADA)** is a federal law that prohibits discrimination based on disability in education programs or activities
 - It also requires the institution to provide reasonable accommodations to a qualified individual with a disability (unless fundamental alteration or undue burden)

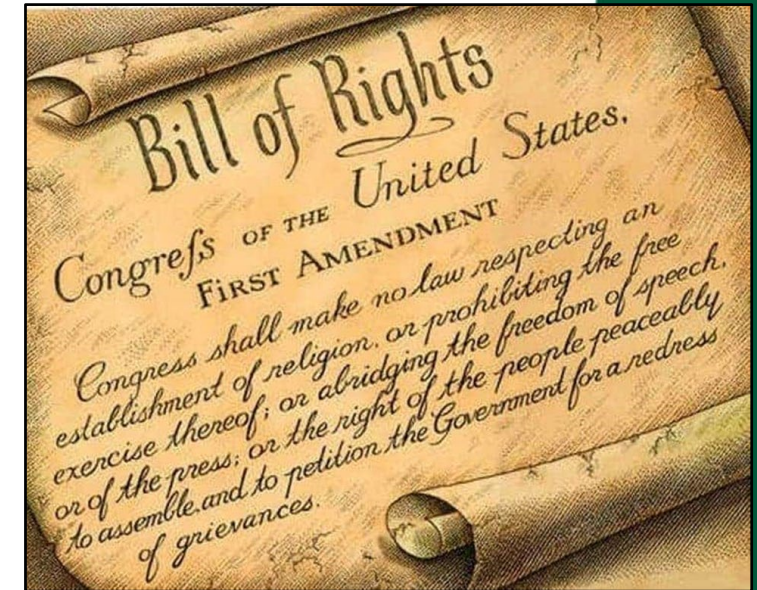


Relevant Education Laws

- These laws apply to students but also apply to University employees (and sometimes guests/visitors).
- The University must not itself (through its agents/employees) engage in discrimination or discriminatory harassment.
- In addition, if the University knows or reasonably should know that an employee or student is experiencing discriminatory harassment, it must promptly and effectively respond.
 - Response may, but not necessarily, include an investigation
- Retaliation is strictly prohibited under all of these laws

Note on the U.S. Constitution

- Under the First Amendment, the government (e.g. UNC Charlotte) generally cannot punish someone's pure speech, even if it's offensive or hateful
- One category of unprotected speech is harassment
 1. Must be severe or pervasive and
 2. Must deny or limit ability to work or engage in education
- Under the Equal Protection Clause, the government (e.g. UNC Charlotte) must have a compelling interest (and narrowly tailored process) for discriminating between different groups of people based on a protected class (race, national origin, etc.)
 - The government almost never meets such a high standard



Implementation

Office of Civil Rights and Title IX (CRTIX)



**Dr. Michelle
Reinken**

Director of Civil
Rights and Title
IX/Title IX
Coordinator



**Whitney
Badramraju**

Associate
Director



Alex Tompkins

Senior Case
Manager



**Victoria
Williams**

Case Manager



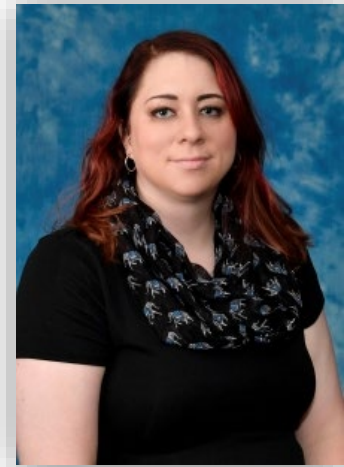
Christine Weigel

Senior
Investigator



Nicole Krysiak

Investigator



**Carrie
Lindquist**

University
Program
Specialist



Applicable University Policies

- **University Policy 504, Title IX Grievance Policy**
 - Applies to all faculty, staff, and students
 - Applies when allegations meet Title IX definitions and jurisdiction
- **University Policy 502, Sexual Misconduct and Interpersonal Violence**
 - Applies to all faculty, staff, and students
 - Applies to sexual or interpersonal misconduct allegations that do not meet the Title IX definitions and jurisdiction
 - Separate procedural documents for student respondents vs. faculty/staff respondents
- **University Policy 501, Nondiscrimination**
 - Applies to all faculty, staff, and students
 - Applies to allegations of discrimination or harassment based on a protected class (including straightforward sex/gender discrimination)
 - Separate procedural documents for student respondents vs. faculty/staff respondents



University Policy 501

- Prohibits harassment based on any of these factors:
 - Race
 - Color
 - Religion, including belief and non-belief
 - Sex, including but not limited to
 - Pregnancy, childbirth, or related medical condition, and
 - Parenting
 - Sexual orientation
 - Gender identity
 - Age
 - National origin
 - Physical or mental disability
 - Veteran status
 - Genetic information
- Also prohibits discrimination based on any of those factors by someone acting on behalf of the University



University Policy 501

- Differences from UP 502/504:
 - Procedural requirements, including rights of a “complainant,” are not as detailed
- Similarities with UP 502/504:
 - University still has an obligation to respond promptly to reports
 - University still has an obligation to address a hostile work environment or other issues within its control
 - Basic procedural rights afforded to student respondents under the Code of Student Responsibility still apply (attorney/nonattorney advocate, hearing or written waiver, appeal grounds, etc.)
 - Due process rights for all respondents still apply



Applicable University Policies (Other)

- **University Policy 501.1, Nondiscrimination on the Basis of Disability Regulation**
 - Alleged disability discrimination is investigated through UP 501
 - Reasonable accommodation requests will first be facilitated through Disability Services (students) or HR (employees) before being investigated through UP 501
- **University Policy 410, Policy and Procedure for Student Appeals of Final Course Grades**
 - If conduct is covered by UP 502 or UP 504, those policies will manage
 - Otherwise, process stays the same (filed through academic college), except now, academic decision-makers have to consult with Director of CRTIX if discrimination is alleged
- **University Policy 411, Student Grievance Procedure**
 - Student grievances based on sexual misconduct, interpersonal violence, or discrimination/harassment based on a protected class go through UP 501/502/504 and not UP 411



Reporting

- Two relevant Incident Report options:
 - Sexual or Interpersonal Misconduct
 - Discrimination/Harassment
- No more BART reports - no more reporting distinctions between students and faculty/staff, etc.
- All policies related to these areas:
 - Require employee reporting to the Office of Civil Rights and Title IX
 - Prohibit retaliation for reporting or participating in an investigation
 - Protect constitutional rights, including First Amendment rights to free speech and free exercise

Submitting a Report

To make a report:

- Go to incidentreport.charlotte.edu
 - Select Report of Discrimination or Discriminatory Harassment IR

If someone discloses to you:

- Be sympathetic and actively listen.
- It is not your role to investigate.
- Remember, university support systems are ready and eager to serve!

Discrimination/ Harassment

Use this form to report incidents of discrimination and harassment. Incidents include, but are not limited to:

- Discrimination based on Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, Age, National Origin, Mental or Physical Disability, Veteran Status, and Genetic Information.
- Harassment based on Race, Color, Religion, Age, National Origin, Mental or Physical Disability, Veteran Status, and Genetic Information.
- Related Retaliation

**DISCRIMINATION OR DISCRIMINATORY
HARASSMENT REPORT**



Initial Response: Discrimination/Harassment

- Supportive Measures (primary response), even if:
 - Unaffiliated/unknown respondent,
 - Allegations don't rise to a policy violation (able to still have educational conversations), OR
 - University unable to gather sufficient information to move forward (e.g. an important witness does not participate)
- If a formal process is pursued, there are two options:
 - UP 501 student respondent procedures
 - UP 501 faculty/staff respondent procedures



Initial Response: Discrimination/Harassment

Note that the university (*i.e.* Director of CRTIX) may take action against certain non-University community members such as contractors/affiliates or visitors under UP 501 or UP 502 on a case-by-case basis. Examples include:

- Not renewing a contract
- Requiring that a specific person not be permitted to work on that contract and/or interact with university students
- Trespass orders

Scenario 1

The Office of Civil Rights and Title IX receives an incident report from a student who wants to share concerns regarding some interactions in their political science class the previous week.

Within the report, the student shares that the class was discussing immigration as a part of the course content and the dialogue became “heated.” The report then details that the conversation “became targeted” towards Latinx students in the class.

The reporting individual makes it clear that the faculty member did not engage in the negative dialogue but allowed the discussion to continue. The report further details that the faculty member did eventually redirect the class when it was clear the conversation was no longer productive.

Scenario 2

Blake asks to speak with you and shares they're distraught over actions by a fellow student (Alex) who they work with at UREC.

When you inquire further, Blake shares that Alex serves as the self-appointed team lead on shift, and everyone else "just kind of goes along with it." Blake reports that while Alex is generally rude, his hostility appears to be currently directed at Blake who is a transgender female.

Alex has shared, more than once, that he believes Blake is "disgusting" and that Alex wants nothing to do with "him." Alex refuses to engage with Blake, uses her pronouns incorrectly, and cuts Blake off every time she tries to participate or provide feedback in the work team.

Blake additionally shares that Alex has been posting about her on his Instagram account, and even includes photos of her that he takes while they're working. In the posts Alex is mocking her and encouraging others to "call him out" if they see Blake in the UREC.

Scenario 3

You're having lunch with a colleague from another department when they share they're pretty frustrated with an internal search process they just participated in.

They tell you that as a part of their interview they were asked about whether they intended to become pregnant in the near future. The chair of the search committee remarked that the open position would require "additional time and attention" and they were "aware she already had at least one younger child at home."

The colleague additionally mentioned that even during lunch with the committee, another comment was made about needing the successful candidate to have "full commitment to the position" and that the previous employee had been "distracted with family obligations."

The colleague stated they just learned that another individual in the department was offered the position, despite having less years of direct experience. They additionally mentioned that the successful candidate is a single male, and they feel that those elements were contributing factors in the decision.



Take-Aways

- Federal laws prohibit discrimination based on a number of protected statuses in both education and employment spaces.
- Office of Civil Rights and Title IX was launched to provide a centralized reporting structure for receiving and resolving reports of sexual or interpersonal misconduct as well as discrimination and discriminatory harassment.
 - Serves faculty, staff, and students
 - Supportive measures and formal processes available
- University Policies
 - UP 504, UP 502, UP 501, UP 410, UP 411, UP 501.1



Take-Aways

- Reporting obligations for all university employees (including student employees)
 - incidentreport.charlotte.edu
- **Office of Civil Rights and Title IX**
 - Cato Hall, Suite 132
 - 704.687.6130
 - civilrights-titleix@uncc.edu
 - civilrights.charlotte.edu/
- **Office of Legal Affairs**
 - Cato Hall, Third Floor
 - 704.687.5732
 - legal-affairs@uncc.edu
 - legal.charlotte.edu

Questions?



UNIVERSITY OF NORTH CAROLINA
CHARLOTTE