

**3D.0108 Title IX Sexual Harassment, Discrimination, and Retaliation for Employees, Students and Visitors** (Approved by the President 8/14/20; revised, approved by President 5/7/2024)

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## SEXUAL HARASSMENT, DISCRIMINATION, AND RETALIATION FOR EMPLOYEES, STUDENTS, AND VISITORS

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex. Individuals cannot, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination, sexual harassment, or sexual violence, under any program or activity receiving Federal financial assistance.

### I. PURPOSE

- A. Emporia State University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities which are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of sex that fall under Title IX. The University upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process.

### II. SCOPE

- A. This policy prohibits all forms of discrimination on the basis of sex. Sometimes, discrimination involves the exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged violation of this policy is reported, the allegations are subject to the procedures and grievance processes

contained in this policy. For policies concerning all other types of harassment, retaliation, or discrimination, see 3D.0106 DISCRIMINATION AND HARASSMENT POLICY.

- B. When the Respondent is a member of the University community, the grievance processes may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

### III. DEFINITIONS

- A. Advisor means a person chosen by a party (or appointed by the institution if the party does not have one) to accompany the party to meetings related to the grievance process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- B. Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- C. Education Program or Activity means locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- D. Finding means a conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged.
- E. Formal Complaint means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.
- F. Formal Grievance Process means a method of formal resolution designated by the University to address conduct that falls within the policies included below, ESU Title IX Procedure, and which complies with the requirements of 34 CFR Part 106.45.

- G. Hearing decision-maker means those who have decision-making and sanctioning authority within the University's Formal Grievance process.
- H. Investigator means the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- I. Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- J. Parties means the Complainant(s) and Respondent(s), collectively.
- K. Responsible Employee means an employee of the University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or their supervisor.
- L. University means Emporia State University, a postsecondary education program that is a recipient of federal funding.
- M. Respondent means an individual who has been reported to have engaged in conduct that could constitute harassment or discrimination as defined within this policy; or retaliation for engaging in a protected activity.
- N. Resolution means the result of an Informal Resolution Process, or Formal Grievance Process.
- O. Sanction means a consequence imposed by the University on a Respondent who is found to have violated this policy.
- P. Sexual Harassment means the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence as defined in Section IX of this policy.
- Q. Supportive Measures means individualized supports for students impacted by sexual harassment or other sexual misconduct to help address barriers to campus life they are facing in connection with their experience.
- R. Title IX Coordinator means the official designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

#### IV. TITLE IX COORDINATOR AND RESPONSIBLE EMPLOYEES

##### A. Role and Responsibility of the Title IX Coordinator

1. The Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

##### B. Independence and Conflict of Interest

1. The Title IX Coordinator, investigators, and designees are neutral and unbiased factfinders. The Title IX Coordinator oversees all processes under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased, for or against, any party in a specific case, or, for or against, Complainants or Respondents.

##### C. Administrative Contact Information

1. Complaints, reports, or notice of alleged policy violations or inquiries about or concerns regarding this policy and procedures may be made internally to:
  - i. Title IX Coordinator, 1 Kellogg Circle, Plumb Hall, 209E, Emporia, KS 66801; (620) 341-5518
  - ii. The University has classified all employees as Responsible Employees of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. Below are the only University employees who are exempt from this responsibility:
    - a. Licensed counselors in the Counseling Center
    - b. Legal Counsel
    - c. Licensed medical staff in the Student Health Center
  - iii. Inquiries may be made externally to:
    - a. Office for Civil Rights (OCR),  
US Department of Education, 400 Maryland Avenue, SW,  
Washington D.C., 20202-1100  
Customer Service Hotline: (800) 421-3481  
Facsimile: (202) 453-6012

TDD: (877) 521-2172  
 Email: [ocr@ed.gov](mailto:ocr@ed.gov)  
 Web: <http://www.ed.gov/ocr>

b. Kansas City Office for Civil Rights

US Department of Education, One Pettycoat Lane, 1010  
 Walnut Street, 3rd Floor, Ste. 320, Kansas City, MO 64016  
 TDD: 800-877-8339  
 Phone: 816-268-0550  
 Email: [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov)

iv. Employees may also file complaints of discrimination with:

a. EEOC Field Office

Gateway Tower, 400 State Avenue, Ste. 905, Kansas City,  
 KS 66101  
 Phone: 913-340-8810  
 TTY: 800-669-6820  
 ALS Video Phone: 844-234-5122

b. Kansas Human Rights Commission

900 SW Jackson St., Ste. 568-S, Topeka, KS 66612-1258  
 Phone: (785) 296-3206  
 TTY: 785-296-0245  
 Email: [KHRC@ks.gov](mailto:KHRC@ks.gov)

D. Required Training

1. Title IX Coordinators, investigators, adjudicators, and any person who facilitates informal resolutions shall be trained on the following:
  - i. The definition of sexual harassment and the scope of the school's education program or activity;
  - ii. Conducting an investigation and grievance process including hearings, appeals, and informal resolutions; and
  - iii. Serving impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

2. Adjudicators shall be trained on the following:
    - i. Using technology at live hearings; and
    - ii. Relevance of questions and evidence, including when questions and evidence about complainants' sexual history are not relevant
  3. Investigators shall be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- E. Notice to Responsible Employees (Mandatory Reporters)
1. All University employees (including student employees), with the exception of those who are specifically designated as Confidential Resources, are Responsible Employees ("Mandated Reporters") and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment. A Responsible Employee includes any employee who:
    - i. Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
    - ii. A student, employee or visitor could reasonably believe has the authority or responsibility to take action.
  2. Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.
  3. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Responsible Employees, as those details must be shared with the Title IX Coordinator.
    - i. Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the University.



- ii. Supportive measures may be offered as the result of such disclosures without formal University action.
- iii. Failure of a Responsible Employee, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of University policy and can be subject to disciplinary action for failure to comply.
- iv. When a Responsible Employee is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though the University is not on notice when a harasser is also a Responsible Employee unless the harasser does in fact report themselves.
- v. Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

## V. NOTICE/COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND/OR RETALIATION

- A. Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:
  1. File a complaint with, or give verbal notice to the Title IX Coordinator, Deputy Title IX Coordinator, Title IX Team Member, or any Responsible Employee. Reports may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address listed for the Title IX Coordinator or any other official listed.
  2. Report online, using the report form posted at: <http://ww.emporia.edu/titleix>. Anonymous reports are accepted but can give rise to a need to investigate. The University tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of

privacy by making a report that allows the University to discuss and/or provide supportive measures.

- B. A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or via online form at <http://www.emporia.edu/titleix> by using the contact information above or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.
- C. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant, if possible, to ensure that it is filed correctly.

## VI. UNIVERSITY RESPONSE

### A. Investigation Timeframe

The University will strive to complete sexual harassment complaint investigations, including issuance of a report of findings to the complainant and respondent, in as timely and efficient a manner as possible within 60 calendar days of receipt of a complaint. However, this timeframe may be extended based on factors such as, but not limited to, schedule and availability of witnesses, holidays or semester breaks including summer break, and complexity of the complaint. If an investigation cannot be completed within 60 calendar days of receipt of the complaint, then the investigator(s) will notify the complainant and respondent of that fact and provide a timeframe for completing the investigation.

### B. Initial Assessment

- 1. Once the University receives notice or a complaint of an alleged violation of this policy, the Title IX Coordinator or their designee will engage in an initial assessment. The steps in an initial assessment can include:
  - i. If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired. If they do not wish to do so, the Title IX Coordinator determines, based on information received, whether to

initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.

- ii.** If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- iii.** The Title IX Coordinator determines whether or not the University has jurisdiction over the alleged conduct under this policy.
- iv.** The Title IX Coordinator reaches out to the Complainant, within 3 business days of the initial report, to offer supportive measures.
- v.** The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- vi.** The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
- vii.** After a formal complaint has been signed, the University will provide a written Notice of Investigation and Allegations (“NOIA”) to both parties which will include:
  - a.** A meaningful summary of the allegations;
  - b.** The identity of the involved parties (if known);
  - c.** The misconduct being alleged;
  - d.** The date and location of the alleged incident(s) (if known);
  - e.** The specific policies implicated;
  - f.** A description of the applicable procedures;
  - g.** A statement of the potential sanctions/responsive actions that could result;
  - h.** A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
  - i.** A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or

relevant evidence obtained during the review and comment period;

- j.** A statement about the University's policy on retaliation;
- k.** Information about the privacy of the process;
- l.** Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor;
- m.** A statement informing the parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process;
- n.** Detail on how the party may request disability accommodations during the interview process;
- o.** A link to the University's Title IX website;
- p.** The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have; and
- q.** An instruction to preserve any evidence that is directly related to the allegations.

**viii.** If during the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial written notice, the University must provide an updated written NOIA to the parties detailing the new allegations. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

#### C. Supportive Measures

1. The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.
2. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter harassment, discrimination, and/or retaliation.

3. The Title IX Coordinator shall make every effort to promptly make supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.
4. The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. The University will act to ensure as minimal an academic impact on the parties as possible. The University will implement measures in a way that does not unreasonably burden the other party.
5. These actions may include, but are not limited to:
  - i. Referring to counseling, medical, and/or other healthcare services
  - ii. Referring to the Employee Assistance Program
  - iii. Assisting with visa and immigration
  - iv. Counseling for student financial aid
  - v. Referring to community-based service providers
  - vi. Altering campus housing assignment(s)
  - vii. Altering work arrangements for employees or student-employees
  - viii. Preparing a safety plan
  - ix. Providing campus safety escorts
  - x. Supporting no contact directives between the parties
  - xi. Providing academic support, extensions of deadlines, or other course/program-related adjustments
  - xii. Issuing a University No Trespass notice
  - xiii. Issuing timely warnings
  - xiv. Modification of class schedule, withdrawals, or leaves of absence
  - xv. Increasing security and monitoring of certain areas of the campus
  - xvi. Any other actions deemed appropriate by the Title IX Coordinator
6. Violations of no contact directives will be referred to appropriate student or employee conduct processes for enforcement.

D. Emergency Removal

1. The University can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an

individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. Prior to removal under this policy, a risk analysis is performed by the Title IX Coordinator in conjunction with relevant other campus authorities using its broader campus safety risk assessment procedures.

2. In all cases in which an emergency removal is imposed pursuant to this policy, the student, employee, or two (2) representatives from a student organization will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.
3. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.
4. A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.
5. The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.
6. The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily reassigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take

grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

7. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

E. Promptness

1. All allegations are acted upon promptly by the University once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control.
2. Any time the general timeframes for the complaint process outlined in University procedures will be delayed, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.
3. On some occasions, law enforcement may be investigating the same conduct that is the basis for a Title IX complaint or investigation. In some instances, a law enforcement agency may request that the University pause or stop its investigation so that the law enforcement agency may gather evidence. While the University will make reasonable efforts to comply with these requests, the University will not permit the Title IX investigation to be unreasonably delayed and will not wait for the law enforcement investigation to be complete before commencing the Title IX investigation.

F. Privacy

1. Every effort is made by the University to preserve the privacy of reports. The University will not share the identity of an individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to

carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

2. The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).
3. Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Title IX Coordinator and designee/s, Division of Student Affairs and Student Conduct, University Police and Safety, and the Threat Assessment Team. Information will be shared as necessary with Investigators, Hearing Panel members/decision-makers, witnesses, and the parties.
4. Confidentiality and mandated reporting are addressed more specifically below.

## VII. UNIVERSITY JURISDICTION

### A. Application of Policy

1. This policy applies to the education program and activities of the University, and to conduct that takes place on the campus or on property owned or controlled by the University, at University sponsored events, or in buildings owned or controlled by University recognized student organizations. The Respondent must be a member of the University's community for its policies to apply.
2. This policy can also be applicable to the effects of off-campus misconduct that effectively deprives someone of access to the University's educational program. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.
3. Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes:



- i. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
  - ii. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
  - iii. Any situation or conduct that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
  - iv. Any situation that is detrimental to the educational interests or mission of the University.
4. If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and supportive measures and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report
5. In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.
6. When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.
7. Similarly, the University may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

**B. Time Limits on Reporting**

1. There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to

investigate, respond, and provide remedies may be more limited or impossible.

2. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.
3. When notice/complaint is affected by significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

#### C. Online Harassment and Misconduct

1. University policies are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities or use University networks, technology, or equipment.
2. While the University may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.
3. Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.
4. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

5. Off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

## VIII. RELATED POLICIES

### A. Consensual Relationship Policy

1. Employees shall follow the University Consensual Relationship Policy. Failure to follow the University Consensual Relationship Policy will be addressed separately from a Title IX Complaint and may result in additional sanctions.

### B. Policy on Nondiscrimination

1. The University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education. See ESU Policy 3D.0106 Discrimination and Harassment Policy.

### C. Policy on Protected Characteristic Discrimination

1. The University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of protected characteristics. Grievances related to disability status and/or accommodations for employees and students is set forth in ESU Policy 3D.0106 Discrimination and Harassment Policy.
2. Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. ESU Policy 3D.0106 Discrimination and Harassment Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.
3. ESU Policy 3D.0106 Discrimination and Harassment Policy sets forth the specific forms of legally prohibited harassment that are also prohibited under University policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of University policy, though supportive measures will be offered to those impacted.

IX. DEFINITIONS AND REQUIREMENTS FOR ALLEGATIONS RELATED TO SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING, AND/OR SEXUAL HARASSMENT

A. Sexual Harassment

1. All procedures outlined in this document have the force and effect of policy as written.
2. The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the state of Kansas regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.
3. The University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.
4. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.
5. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

i. Quid Pro Quo:

An employee of the university, conditions the provision of an aid, benefit or service of the University on an individual's participation in unwelcome sexual conduct.

ii. Sexual Harassment:

Unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and objectively offensive, that it effectively denies a person equal access to the University's education program or activity.

B. Sexual Assault

1. Sexual assault means one of the following sexual offenses, whether forcible or non-forcible, when directed at another person without that person's consent, including instances where the person is incapacitated:

- i. Rape – The penetration of any sort, no matter how slight, between the penis and the vagina, or any attempt to do the same.
- ii. Sodomy – The penetration of any sort, no matter how slight, between the penis and the mouth or the penis and the anus of the Complainant, or any attempt to do the same.
- iii. Sexual Assault with an Object – The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of the Complainant’s body, or any attempt to do the same.
  - a. “Object” or “instrument” include, among other things, breasts, fingers, mouth, and tongue.
- iv. Fondling – The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- v. Incest – Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Kansas law.
- vi. Statutory Rape – Non-forcible sexual intercourse with a person who is under the statutory age of consent (16 years of age in Kansas).

C. Dating Violence

1. Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
2. For the purpose of this definition:
  - i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

- ii. Dating violence does not include acts covered under the definition of domestic violence.

D. Domestic Violence

1. Domestic Violence is defined as a felony or misdemeanor crime of violence committed:
  - i. By a current or former spouse or intimate partner of the Complainant;
  - ii. By a person with whom the Complainant shares a child in common;
  - iii. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - iv. By a person similarly situated to a spouse of the Complainant under the Kansas domestic or family violence laws; or
  - v. By any other person against an adult or youth Complainant who is protected from that person's acts under the Kansas domestic or family violence laws.
2. To categorize an incident as Domestic Violence under this policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

E. Stalking

1. Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - i. Fear for the person's safety or safety of others; or
  - ii. Suffer substantial emotional distress.

For purposes of this definition:

- i. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- iii. Substantial emotional distress means significant mental suffering or anguish that may be cause for, but does not necessarily require, medical or other professional treatment or counseling.

#### F. Other Sex-based Offenses

Sex Discrimination (also referred to as Non-Sexual Harassment Sex Discrimination). Providing differential treatment on the basis of sex such as in athletics, or with respect to employment, admissions or enrollment or participation in an academic course.

Sexual exploitation. Occurs when a person engages in non-consensual or abusive conduct that takes sexual advantage of another individual for the person's own advantage or benefit, or to benefit or advantage anyone other than the individual being exploited and does not constitute any other offense addressed in this Policy.

Discrimination against pregnant and parenting students.

##### 1. Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions apply:

- i. Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
- ii. Coercion: Coercion is unreasonable pressure for sexual activity. Coercion can be accomplished by isolation, frequency, intensity, or duration
- iii. Consent to sexual activity is:
  - Informed, Knowing, and Voluntary (freely given)

- Active (not passive)
  - Creates mutually understandable permission regarding the conditions of sexual activity
  - No means no, but nothing also means no; Silence and passivity do not equal consent
  - To be valid, consent must be given immediately prior to or contemporaneously with the sexual or intimate activity
  - Consent can be withdrawn at any time, so long as it is clearly communicated verbally or non-verbally
  - Consent to one form of sexual activity does not necessarily imply consent to other forms of sexual activity
- a. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter.
  - b. Consent can also be withdrawn once given, if the withdrawal is reasonably and clearly communicated. If consent is withdrawn that sexual activity should cease within a reasonable time.
  - c. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not enough to constitute consent.
  - d. Proof of consent or non-consent and the burden of collecting evidence sufficient to reach a determination regarding responsibility, rests on the University, not the parties.
  - e. The burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
  - f. Consent in relationships must be considered in context. When parties consent to BDSM (Bondage, discipline/dominance, submission/sadism, and masochism) or other forms of kink,



non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

- iv. Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.
  - a. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.
  - b. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
  - c. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
  - d. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## 2. Sexual Exploitation

- i. In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the University prohibits Sexual Exploitation as a form of discrimination.

- ii. Sexual Exploitation means: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
- a. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed) or invasion of sexual privacy
  - b. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
  - c. Prostituting another person
  - d. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - e. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - f. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - g. Forcing a person to take an action against that person's will by threatening to show, post, or share, information, video, audio, or an image that depicts the person's nudity or sexual activity
  - h. Knowingly soliciting a minor for sexual activity
  - i. Engaging in sex traffickin
  - j. Creation, possession, or dissemination of child pornography
  - k. Stealthing (The practice of removing or damaging a condom during sexual intercourse without the knowledge and consent of one's partner).

G. Other Civil Rights Offenses

1. Violation of any other University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities. See: ESU Policy 3D.0106 Discrimination and Harassment Policy.

H. Retaliation

1. Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.
2. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.
3. It is prohibited for the University or any member of the University's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.
4. Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
5. The exercise of rights protected under the First Amendment does not constitute retaliation.
6. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not

sufficient to conclude that any party has made a materially false statement in bad faith.

I. When a Complainant Does Not Wish to Proceed

1. If a Complainant does not wish for their name to be shared with the Respondent, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.
2. The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.
3. The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.
4. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.
5. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.
6. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.
7. When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Complainant may request that their Advisor serve as proxy for the Complainant throughout the process,

acting to ensure and protect the rights of the Complainant, not in the Complainant's place as a party.

8. Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.
9. In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.
10. If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures.

J. Federal Timely Warning Obligations

1. Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.
2. The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

K. False Allegations and Evidence

1. Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.
2. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve

such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.

L. Amnesty for Complainants and Witnesses

1. The University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.
2. It is in the best interests of the University community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.
3. To encourage reporting and participation in the process, the University maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.
4. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.
5. Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual misconduct to the University Police and Safety).
6. The University maintains a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the University may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

## M. Federal Statistical Reporting Obligations

1. Campus officials – those deemed as Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):
  - i. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
  - ii. Hate crimes, which include all “primary crimes” and incidents of larceny, theft, simple assault, intimidation, destruction/damage/vandalism of property;
  - iii. VAWA – based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
  - iv. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to the Emergency Manager regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Fire and Safety Report and daily campus crime log. Campus Security Authorities may include but are not limited to: student affairs/student conduct staff, campus law enforcement, local law enforcement, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## X. GRIEVANCE PROCESSES FOR ALLEGED VIOLATIONS OF SEXUAL HARASSMENT, DISCRIMINATION AND RETALIATION POLICY

### A. Overview

1. The University will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures and the Procedures outlined in the Title IX Process.

2. The University will receive, process, investigate, and make decisions related to complaints through a process that is fair and impartial. The University will not allow conflicts of interest (real or perceived) or bias to affect the outcome of the process.
3. Decisions made pursuant to this policy will be made based upon an objective evaluation of all relevant evidence, inculpatory and exculpatory. Additionally, credibility determinations will not be based on a person's status as a complainant, respondent, or witness.
4. In each of the complaint processes used by the University under this policy, it will be presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process.
5. All complaint processes utilized by the University under this policy will use the preponderance of evidence standard. This standard will require a party to prove a fact is more probably true than not true.
6. All complaint processes utilized by the University will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
7. If other policies are invoked such as policies on protected class harassment, discrimination, and retaliation, see ESU Policy 3D.0106 Discrimination and Harassment Policy for a description of the procedures applicable to the resolution of such offenses.
8. All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through procedures set forth in University policies.

B. Violence Risk Assessment

1. In many cases, the Title IX Coordinator may determine that a Violence Broader Campus Safety Risk Assessment (BCRA) should be conducted if the Respondent is a student or student employee as part of the initial assessment. A BCRA aids in ten critical and/or required determinants, including:



- i. Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
  - ii. Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
  - iii. Whether to put the investigation on the footing of incident and/or pattern and/or climate;
  - iv. To help identify potential predatory conduct;
  - v. To help asses/identify grooming behaviors;
  - vi. Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
  - vii. Whether to permit a voluntary withdrawal by the Respondent;
  - viii. Whether to impose transcript notation or communicate with a transfer University about a Respondent;
  - ix. Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
  - x. Whether a Clery Act Timely Warning and/or Trespass order is needed.
2. Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A BCRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

### C. Counterclaims

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the

counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

D. Right to an Advisor

1. The parties may each have one (1) Advisor of their choice present with them for all meetings and interviews within the complaint process if they so choose. The parties may select whoever they wish to serve as their Advisor. This could include an attorney, advocate, or support person.
2. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.
3. While permissible, parties should be cautious that choosing Advisors who are also witnesses to the conduct that is the focus of the allegations creates the potential for conflicts of interest and bias. These potential conflicts and bias may be considered by the decision-maker(s).
4. The University may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX coordinator and will be granted equitably to all parties.
5. The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses if the party does not have an advisor at the time of hearing. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's resolution process.

6. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. However, if the complaint process progresses to a formal hearing, an Advisor is required to cross-examine the other party. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

7. **Advisor's Role**

- i. The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews.
- ii. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.
- iii. The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

8. **Pre-interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and University's policies and procedures.

9. **Advisor Violations of University Policy**

- i. All Advisors are subject to the same University policies and procedures, whether they are attorneys or not.
- ii. Advisors are expected to advise their advisees without disrupting proceedings.
- iii. Advisors should not address University officials in a meeting or interview unless invited to (asking procedural questions).

- iv. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision- maker(s) except during a hearing proceeding, during cross examination.
- v. The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.
- vi. Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### 10. Sharing information with the Advisor

- i. The University is required to send investigative reports to both parties and their advisors. The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors, including attorney Advisors, other than investigative reports. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.
- ii. If a party chooses an attorney advisor, the Title IX Coordinator, or designee, and decision-makers within this grievance process are not bound to attorney-attorney communications. All communications and documentation from the Title IX Coordinator, or designee, or decision-makers will be sent to the parties via their University assigned email.
- iii. Privacy of Records Shared with Advisor

- i. Advisors are expected to maintain the privacy of the records shared with them by the party they are advising. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.
- iv. Expectations of an Advisor  
The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.
- v. Expectations of the Parties with Respect to Advisors  
A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing. As a public entity, the University fully respects and accords the Weingarten rights of employees. For parties who are entitle to union representation, the University will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses

are not permitted to have union representation or Advisors in grievance process interviews or meetings.

- vi. Assistance in Securing an Advisor  
For representation, Respondents may wish to contact organizations such as:

FACE (<http://www.facecampusequality.org>)

SAVE (<http://www.saveservices.org>)

- ii. Complainants may wish to contact organizations such as:

The Victim Rights Law Center (<http://www.victimrights.org>)

The National Center for Victims of Crime

9<http://www.victimsofcrime.org>)

Time's Up Legal Defense Fund (<http://nwic.org/times-up-legal-defense-fund/>)

## XI. INFORMAL RESOLUTION PROCESS

The Informal Resolution option is an informal process, including facilitation, mediation or restorative practices, etc., by which a mutually agreed upon resolution of an allegation is reached. This process cannot be used in cases of sexual violence. Additionally, this process cannot be used in cases in which a university employee has sexually harassed a student of the university.

- A. In the event that the Complainant does not wish to proceed with the formal grievance process, they may elect to pursue the informal resolution process.
- B. Informal Resolution can include three different approaches:
  1. When the parties agree to resolve the matter using an informal/alternate resolution process;
  2. When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
  3. When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

- C. If a Respondent wishes to initiate Informal Resolution, they must contact the Title IX Coordinator to request to do so.
- D. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.
- E. The University shall obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution process before proceeding and will not pressure the parties to participate in the Informal Resolution process.
- F. The Title IX Coordinator may consider the following factors to assess whether Informal/Alternate Resolution is appropriate, or which type of Informal Resolution processes may be most successful for the parties:
  - 1. The parties' amenability to Informal Resolution process;
  - 2. Likelihood of potential resolution, considering the allegations set forth in the Formal Complaint;
  - 3. The parties' motivation to participate;
  - 4. Cleared violence risk assessment/ongoing risk analysis;
  - 5. Disciplinary history;
  - 6. Whether an emergency removal is needed;
  - 7. Complaint complexity;
  - 8. Goals of the parties.
- G. The Title IX Coordinator must approve any resolution agreement reached as a result of the Informal Resolution process. An Informal Resolution agreement is not final until it is signed by all parties and the Title IX Coordinator. The Title IX Coordinator will maintain records of any resolution agreement reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions.
- H. Results of complaints resolved by Informal Resolution are not appealable.
- I. Respondent's Acceptance of Responsibility
  - 1. The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the complaint process.
  - 2. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX

Coordinator will determine whether Informal Resolution can be used according to the criteria in that section above.

3. If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies.
  - i. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.
  - ii. This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution.
  - iii. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.
  - iv. When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

#### **J. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the University. Negotiated Resolutions are not appealable

## **XII. FORMAL GRIEVANCE PROCESS**

The following Formal Grievance Processes shall be utilized in accordance with the rest of this policy, based on the type of discriminatory conduct being alleged.

### **A. Track A Process**

#### **1. Conditions**



This Formal Grievance Process applies when:

- i.** Respondent is a student (including student employee), employee, or other University affiliate at the University the time of the alleged conduct;
- ii.** The alleged conduct includes Sexual Assault, Dating Violence, Domestic Violence, Stalking, and/or Sexual Harassment;
- iii.** The alleged conduct occurred in the United States; and
- iv.** Complainant was participating or attempting to participate in an education program or activity at the University.

OR

- iii.** Respondent is a student (including student employee), employee, or other University affiliate at the University the time of the alleged conduct;
- iv.** The alleged conduct includes Sexual Assault, Dating Violence, Domestic Violence, Stalking, and/or Sexual Harassment; and
- v.** The alleged conduct occurred off campus and substantially affects a person's education or employment with the University or poses a risk of harm to members of the University community.

## 2. Process

- i.** Written Notice of Investigation and Allegations
  - a.** After a Formal Complaint has been signed, Parties will receive a written Notice of the Formal Complaint, which includes the information contained in Section VI(A)(1)(vii) of this policy.
- ii.** Investigation of the Formal Complaint
 

All investigations are conducted in a thorough, reliable, impartial, prompt, and fair manner. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant

evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- a.** Provide each interviewed party and witness an opportunity to review and verify the investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings;
- b.** When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose;
- c.** Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
- d.** Allow each party the opportunity to suggest witnesses and questions they wish the investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions;
- e.** Complete the investigation promptly and without unreasonable deviation from the intended timeline;
- f.** Provide regular status updates to the parties throughout the investigation;
- g.** Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence, including relevant physical or documentary evidence. In the report, the

investigator gathers, assesses, and synthesizes evidence, but does not make conclusions, engage in policy analysis, or make recommendations as part of their investigative report.

- h.** Prior to the conclusion of the investigation, provide the parties a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor);
- i.** The investigator may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- j.** The investigator will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The investigator(s) should document all rationales for any changes made after the review and comment period.
- k.** If the investigator is not the Title IX Coordinator, the investigator shares the report with the Title IX Coordinator for their review and feedback.
- l.** The investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their advisors through secure electronic transmission at least ten (10) business days prior to a hearing. The parties are also

provided with a file of any directly related evidence that was not included in the report.

iii. Live Hearing

a. Notice

Upon conclusion of the investigation, the Title IX Coordinator will refer the matter for a hearing which cannot be less than ten (10) business days from the conclusion of the Investigation –when the final investigation report is transmitted to the parties and the decision-maker(s)–unless all parties and the decision- maker(s) agree to an expedited timeline.

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties, which contains the following information:

1. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result;
2. The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities;
3. Any technology that will be used to facilitate the hearing;
4. Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decisionmaker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing;

5. A list of all those who will attend the hearing, along with an invitation to object to any decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing;
6. Information on how the hearing will be recorded and on access to the recording for the parties after the hearing;
7. Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions;
8. A copy of all the materials provided to the decision-maker(s) about the matter, unless they have been provided already;
9. An invitation to each party to submit to the Chair an impact statement pre-hearing that the decision-maker will review during any sanction determination;
10. An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing;
11. Whether parties may bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for resolution. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing. The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person must inform the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing so appropriate arrangements can be made.

b. Pre-Hearing

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair will delay the hearing and instruct

that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than one business day prior to the hearing. Decision-Makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered

at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will be recorded.

c. Decision-Maker(s)

The Title IX Coordinator will select an appropriate decision-makers depending on whether the Respondent is an employee or a student. Allegations involving student-employees will be directed to the appropriate decision-makers depending on the context of the alleged misconduct.

The University will designate a single decision-maker or a three-member panel, at the discretion of the Title IX Coordinator. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.



Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as decision-makers. Those who are serving as Advisors for any party may not serve as decision-makers in that matter.

The Title IX Coordinator may not serve as a decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

Any evidence that the decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider:

- i. Incidents not directly related to the possible violation, unless they evidence a pattern;
- ii. The character of the parties; or
- iii. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the University uses a progressive discipline system. This information is only considered at the sanction stage of the process.

The parties may each submit a written impact statement prior to the hearing for the consideration of the decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the decision-makers render a determination based on the preponderance of the evidence whether it is more likely than not that the Respondent violated the Policy as alleged.

d. Hearing Procedures

At the hearing, the decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Title IX.

Participants at the hearing will include the Chair, any additional panelists, hearing facilitator, the Investigator(s) who conducted the investigation, the parties (In incidents involving student groups or organizations, the president, director, team captain or other member of student leadership will participate in the student conduct process on behalf of the group or organization), Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions about procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the decision-maker(s) and the parties and will then be excused.

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling

reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Chair AND/OR hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator.

The Investigator will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the decision-maker(s) should ask the Investigator their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

Once the Investigator present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the

Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.

The decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. Recordings will be made available to both parties upon request. The parties may not record the proceedings and no other unauthorized recordings are permitted.

Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.

The decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. Recordings will be made available to both parties upon request. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The decision-maker(s), the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

The decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The decision-maker(s) will review the statements and any pertinent conduct history provided by the appropriate administrator and will determine the appropriate sanction(s).

The Chair will prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.

This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

iv. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 5 business days of receiving the decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

v. Appeal

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within 5 days of the delivery of the Notice of Outcome.

B. Track B Process

1. Conditions

This Formal Grievance Process applies when the alleged conduct is a violation of:

- i. Sex Discrimination
- ii. Sexual Exploitation
- iii. Unprofessional or Inappropriate Conduct
- iv. Retaliation
- v. False Information and False Complaints
- vi. Interference with Grievance Processes under this Policy
- vii. Failure to Report by a Non-Confidential Employee
- viii. Failure to Adhere to Interim Measures
- ix. Pregnancy or Parenting Discrimination

2. Process

i. Written Notice of Investigation and Allegations

After a Formal Complaint has been signed, Parties will receive a written Notice of the Formal Complaint, which includes the information contained in Section VI(A)(1)(vii) of this policy.



ii. Investigation of the Formal Complaint

The Investigator will prepare a written preliminary investigation report (PIR) that will outline each of the allegations that potentially constitutes a conduct violation of this policy, provide the timeline of the investigation, and fairly summarize relevant evidence, participant statements, and responses to questions, and include a statement of finding of violation or no finding of violation and the related rationale.

Prior to the completion of the investigation report, the Investigator will provide access to the preliminary investigation report (PIR) and all relevant evidence obtained as part of the investigation to all Parties (and the Party's Advisor, if any, upon a Party's signed information release for their Advisor of choice). Parties will have 10 business days to inspect, review, and respond to the PIR. All responses must be submitted by the Party, in writing, to the Investigator. The Investigator will consider all timely responses submitted by the Parties.

If, after reviewing all timely responses, the Investigator changes the finding, then the Investigator will provide all Parties and their Advisor(s) access to an amended PIR and all relevant evidence upon which it is based. The amended PIR will include a summary of relevant information received during the response period and a rationale for the change of finding. Parties will have 5 business days to inspect, review, and respond in writing to the Investigator. The Investigator will consider all timely responses submitted by the Parties.

All investigations are conducted in a thorough, reliable, impartial, prompt, and fair manner. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

iii. Completed Investigation Report

If there is a finding of violation, the completed investigation report (CIR) will be provided to the appropriate decision-maker for decision regarding disciplinary sanctions as follows:

If the Respondent is a student, it will be referred to the Dean of Students for disciplinary sanctions decision, in accordance with University's student disciplinary procedures. Prior to issuing a disciplinary sanction, the Dean of Students will consult with the Investigator regarding the finding of violation. If the violation has a nexus to Respondent's appointment as student employee, the disciplinary sanctions decision will be made in consultation with the Chief Human Resources Officer and/or the Vice President of Academic Affairs and Provost. Any disciplinary sanction imposed will be included in the CIR. If the disciplinary sanction is suspension or expulsion, Respondent can request to resolve this matter via a hearing procedure. The hearing will be held in accordance with the hearing procedures outlined in Track A above.

If the Respondent is faculty, it will be referred to the Vice President of Academic Affairs and Provost for disciplinary sanctions decision, in accordance with the University's policies for discipline and termination of faculty; and

If the Respondent is staff, it will be referred to the Chief Human Resources Officer for disciplinary sanctions decision, in accordance with the University's policies for discipline and termination of staff.

**iv. Appeal**

Eligible Respondents can appeal or grieve the assigned discipline outcome.

1. Student Respondents can appeal by following the Appeal Process in Track A above.
2. Faculty Respondents will follow the procedures set out in the policy governing faculty grievances.
3. Staff Respondents will follow the procedures set out in the policy governing staff grievances. Staff Respondents are eligible to appeal or grieve an assigned discipline outcome if they are both within the scope of the employee grievance

policy and the assigned discipline is something grievable under that policy. If both of those conditions are not met, the staff Respondent is not eligible to appeal or grieve an assigned discipline outcome under this section.

### XIII. DISMISSAL OF COMPLAINT(S)

- A. The University **MUST** dismiss a formal complaint or any allegation therein if, at any time during the investigation or hearing, it is determined that:
1. The conduct alleged in the formal complaint would not constitute sexual harassment, as defined in this policy, even if proved;
  2. The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations);
  3. The University does not have control over the Respondent;
  4. The conduct did not occur against a person in the United States; or
  5. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the University.
- B. The University **MAY** dismiss a formal complaint or any allegation therein if, at any time during the investigation or hearing:
1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
  2. The Respondent is no longer enrolled in or employed by the University; or
  3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complain or allegations therein.
- C. Upon a required or optional dismissal, the University will promptly and simultaneously send written notice to the parties.

#### XIV. CONSOLIDATION OF COMPLAINTS

- A. Provided that the allegations of sexual harassment arise out of the same facts or circumstances, schools are permitted to consolidate formal complaints that are:
1. Against more than one respondent;
  2. By more than one complainant against one or more respondents; or
  3. By one party against the other party.

#### XV. STATEMENT OF THE RIGHTS OF THE PARTIES (SEE APPENDIX A)

#### XVI. SANCTIONS

A. Student-Respondents

Sanctions against a student will be imposed by the decision-maker(s) within 10 business days upon receipt of the hearing officer's determination. If the violation has a nexus to Respondent's appointment as a student employee, the discipline decision will be made in consultation with the Chief Human Resources Officer and/or Executive Vice President and Provost. Student disciplinary actions may include one or more of the sanctions listed below:

- Written warning;
- Disciplinary probation;
- Withholding of official transcript and/or degree;
- Bar against readmission, bar against enrollment, withdrawal from the University or from a period of enrollment, and/or drop from one or more classes;
- Restitution or reimbursement for damage to or misappropriation of University, Kansas Board of Regents, or State of Kansas property;
- Suspension of rights and privileges, including, but not limited to, participation in athletic or extracurricular activities and residing in or entering University housing;

- Deferred suspension;
- Suspension from the University for a specified period of time;
- Expulsion (permanent separation from the University); or
- Other sanction or sanctions as deemed appropriate under the circumstances.

B. Employee-Respondents

Sanctions against University employees will be handled under the University's employment policies governing discipline and dismissal of faculty and staff, respectively. Sanctions against University affiliates will be handled by the human resources staff in consultation with the affected college, school, or unit. The Vice President of Academic Affairs and Provost will determine sanctions for faculty within 10 business days upon receipt of the hearing officer's determination. The Chief Human Resources Officer will determine sanctions for staff within 10 business days upon receipt of the hearing officer's determination. Sanctions may include, but are not limited to:

- Mandated training;
- Written reprimands or corrective action;
- Imposition of conditions on teaching, supervising, or other official duties;
- Financial penalty;
- Unpaid time off;
- Suspension with or without pay;
- Demotion;
- Reassignment of duties;
- Other professional sanctions; or
- Termination

The University will consider termination for faculty or staff, the presumptively appropriate discipline for a finding of responsibility, for the following Prohibited Conduct: (1) Sexual Assault, (2) Interpersonal Violence (3) Stalking, and (4) Sexual Harassment. This presumption may be rebutted or confirmed, in the disciplinary authority's discretion, by one or more mitigating or aggravating factors in order to reach a just and appropriate resolution in each case.

Mitigating factors include, but are not limited to:

- The expressed requests of the affected individual; and
- The absence of previous disciplinary history of the Respondent.

Aggravating factors include, but are not limited to:

- The nature and severity of the conduct, including the use of force or a weapon;
- The level of ongoing threat to the physical safety and security of the Complainant or other members of the University community;
- The need to remedy and address the impact or effects of the conduct on the Complainant;
- The impact or implications of the conduct on the community or the University, including other members of an affected academic or departmental unit;
- Whether the Respondent engaged in any acts of retaliation for the report of the incident;
- Prior misconduct by the Respondent, including the Respondent's relevant prior discipline or criminal history (if available); and
- Refusal to acknowledge culpability or accept responsibility for clear violation of the Policy.

Sanctions will be communicated to the parties, as appropriate, in writing by the Vice President of Academic Affairs and Provost and/or the Chief Human Resources Officer, or their designee. In all cases involving violations of this Policy, the file will be archived by the Title IX Office.

## XVII. APPEALS

### A. Process

A single Appeal Chair will be designated by the Title IX Coordinator to review the appeal. No Appeal Chair will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decisionmaker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Chair will render a decision in no more than 5 business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent in writing to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

**B. Grounds for Appeal**

1. Appeals are limited to the following grounds:

- i. Procedural irregularity that affected the outcome of the matter;
- ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- iii. The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

**XVIII. LONG-TERM REMEDIES AND ACTIONS**

- A.** Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.

These remedies/actions may include, but are not limited to:

- i.** Referral to counseling and health services
- ii.** Referral to the Employee Assistance Program (EAP)
- iii.** Education to the community



- iv. Permanent alteration of housing assignments
  - v. Permanent alteration of work arrangements for employees
  - vi. Provision of campus safety escorts
  - vii. Climate surveys
  - viii. Policy modification
  - ix. Provision of transportation accommodations
  - x. Implementation of long-term contact limitations between the parties
  - xi. Implementation of adjustments to academic deadlines, course schedules, etc.
- B.** At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.
- C.** When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by the University to the Respondent.
- XIX. FAILURE TO COMPLETE SANCTIONS/COMPLY WITH INTERIM AND LONG-TERM REMEDIES/RESPONSIVE ACTIONS**
- A.** All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Hearing Officer.
- B.** Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

- C. A suspension will only be lifted when compliance is achieved to the satisfaction of the Dean of Students for students and Director of Human Resources for staff and faculty.

## XX. RECORDKEEPING

- A. In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept for at least 7 years, or as required by state or federal law or institutional policy, by the Title IX Coordinator in the Title IX case database.
- B. The University will also maintain for at least 7 years, all materials used to train Title IX Coordinators, investigators, adjudicators, and any person who facilitates an informal resolution process and make these training materials publicly available on their websites.

## XXI. DISABILITIES ACCOMMODATION IN THE RESOLUTION PROCESS

- A. The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at the University. Anyone needing such accommodations or support should contact the Director of Disability Services, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

## XXII. POLICY REVISIONS

- a. These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.
- b. The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party.
- c. The Title IX Coordinator may also vary procedures materially with notice (on the University website, with the appropriate effective date identified) upon

determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

- d.** Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.
- e.** Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.
- f.** If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.
- g.** This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.
- h.** This policy is effective as of January 26, 2024.

#### APPENDIX A: STATEMENT OF RIGHTS OF THE PARTIES

1. The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to University officials.
2. The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
3. The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
4. The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.

5. The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
6. The right to be treated with respect by University officials.
7. The right to have University policies and procedures followed without material deviation.
8. The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
9. The right not to be discouraged by University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
10. The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
11. The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement and/or other University officials.
12. The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
13. The right to a University implemented no- contact order, or no trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.
14. The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:

- A. Relocating an on-campus student's housing to a different on-campus location
  - B. Assistance from University staff in completing the relocation
  - D. Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - E. Transportation accommodations
  - F. Visa/immigration assistance
  - G. Arranging to dissolve a housing contract and a pro-rated refund
  - H. Exam, paper, and/or assignment rescheduling or adjustment
  - I. Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - J. Transferring class sections
  - K. Temporary withdrawal/leave of absence (may be retroactive)
  - L. Campus safety escorts
  - M. Alternative course completion options.
15. The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
16. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
17. The right to ask the Investigator(s) and decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
18. The right to provide the Investigator(s)/decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.

19. The right not to have irrelevant prior sexual history or character evidence admitted as evidence.
20. The right to know the relevant and directly related evidence obtained and to respond to that evidence.
21. The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
22. The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
23. The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
24. The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
25. The right to regular updates on the status of the investigation and/or resolution.
26. The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and decision-maker(s) who have received at least 8 hours of relevant annual training.
27. The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
28. The right to preservation of privacy, to the extent possible and permitted by law.
29. The right to meetings, interviews, and/or hearings that are closed to the public.
30. The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

31. The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
32. The right to the use of the appropriate standard of evidence, preponderance of the evidence to make a finding after an objective evaluation of all relevant evidence.
33. The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
34. The right to have an impact statement considered by the decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
35. The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
36. The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
37. The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
38. The right to a fundamentally fair resolution as defined in these procedures.