

**3D.0106 DISCRIMINATION AND HARASSMENT PREVENTION POLICY** (approved by President 4/04; revised, approved by President 6/17/09; revised, approved by President 10/09/2014; revised, approved by President 5/7/2024)

[This policy is subject to modification as necessary to remain in compliance with the spirit of anticipated federal regulations applicable to this policy, as well as with the final regulations once published and effective.]

Emporia State University seeks to create an atmosphere that recognizes and protects an environment of acceptance and inclusion for all members of the university community, including, but not limited to, faculty, staff, and students. Emporia State University prohibits all forms of discrimination including all types of harassment, sexual violence, and all other types of violence. Federal law and university policy (see Explanations section) protect a number of groups from unlawful discrimination. The University makes all decisions with reference to employment status and student status without regard to age<sup>1</sup>, race<sup>2</sup>, color<sup>3</sup>,

---

<sup>1</sup> Age Discrimination Act of 1975, Age Discrimination in Employment Act of 1967

<sup>2</sup> Title VI & VII of the Civil Rights Act of 1964

<sup>3</sup> Title VI & VII of the Civil Rights Act of 1964

religion, gender<sup>4</sup>, sex<sup>4</sup>, marital status<sup>5</sup>, national origin<sup>2</sup>, disability status<sup>6</sup>, veteran status<sup>7</sup>, sexual orientation<sup>8</sup>, parental status, gender identity, gender expression and genetic information<sup>9</sup> (“gender” refers to a person’s identity or expression as a male or female, regardless of their sex), ethnicity or any other factors which cannot lawfully be considered, to the extent specified by applicable federal and state laws. Moreover, the university regards inappropriate behavior, unfair treatment, acts of sexual violence, or harassment of any individual to be inconsistent with its goal to provide an environment in which members of the university community can develop intellectually, professionally, personally, and socially. The University will take immediate and appropriate steps to stop any discrimination or harassment, prevent recurrence and remedy discriminatory effects on the complainant and others, if appropriate. This policy applies to employees, students, applicants for employment or admission, contractors, vendors, visitors, guests, and participants in University sponsored programs or activities, both on and off campus.

The Affirmative Action Officer and/or designee and/or designee in the Office of Human Resources can be reached by phone at (620) 341-5379 and is responsible for implementation of a campus-wide harassment training program for faculty and staff. This training shall be mandatory for University employees and appropriate training records will be maintained. This University has adopted a policy on the Use of Controversial Material in Instruction, Including the Use of Sexually Explicit Materials in Instruction (University Policy Manual 4E.0301) that complies with the Kansas Board of Regents’ policy on this issue. The harassment, sexual violence, and discrimination policies and procedures described herein shall be followed for the reporting, investigation, handling, and disposition of all complaints by any person regarding ESU Policy 4E.0301.

---

<sup>4</sup> Title VII of the Civil Rights Act of 1964, Equal Pay Act of 1963, Pregnancy Discrimination Act of 1978, Title IX of Education Amendments of 1972

<sup>5</sup> Emporia State University Equal Employment & Educational Opportunity and Non-Discrimination Policy

<sup>6</sup> Americans with Disabilities Act of 1990, Sections 503 & 504 of the Rehabilitation Act of 1973

<sup>7</sup> Vietnam Era Veteran’s Readjustment Act of 1974, Uniform Services Adjustment and Re-Adjustment Act of 1994

<sup>8</sup> Kansas Board of Regents Policy and Procedures Manual, Policy on Affirmative Action and Equal Opportunity

<sup>9</sup> Genetic Information Nondiscrimination Act “sex” refers to whether a person is a male or female

**3D.0106.01 EXPLANATIONS** (revised, approved by President 5/7/2024)

The Age Discrimination in Employment Act of 1967 prohibits discrimination against individuals who are at least 40 years of age. Discrimination is prohibited in all terms and conditions of employment including: hiring, firing, compensation, job assignments, shift assignments, discipline, and promotions.

Age is also addressed in the Age Discrimination Act of 1975. Under this act no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

Employment discrimination based on race, color, religion, sex, or national origin is prohibited under Title VII of the Civil Rights Act of 1964. It is unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment.

Under Title VI of the Civil Rights Act of 1964 no person on the basis of race, color, or national origin be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Equal Pay Act of 1963 prohibits discrimination on the basis of sex in the payment of wages or benefits, where people perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

The Pregnancy Discrimination Act of 1978 is an amendment to Title VII of the Civil Rights Act of 1964. Therefore, discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII. Women affected by pregnancy or related conditions must be treated the same as other applicants or employees with similar abilities or limitations. The Americans with Disabilities Act of 1990 prohibits an employer from discriminating against a qualified applicant or employee because of their disability. To be protected individuals need to be qualified and able to perform the job with or without reasonable accommodation from the employer.

The Pregnant Workers Fairness Act (PWFA) requires covered employers to provide “reasonable accommodations” to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.” The PWFA does not replace federal, state, or local laws that are more protective of workers affected by pregnancy, childbirth, or related medical conditions.

Discrimination based on disability in any program or activity receiving Federal financial assistance is prohibited under Sections 503 and 504 of the Rehabilitation Act of 1973 and under the Americans with Disabilities Act (ADA).

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 prohibits discrimination based on veteran status in federally assisted programs and it requires affirmative action to employ and advance in employment of veterans. Veterans protected by this act are Vietnam era veterans, special disabled veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

**Gender Identity:** The gender that a person claims for oneself – which may or may not align with the gender at birth.

**Gender Expression:** How a person behaves, appears, or presents oneself with regard to societal expectations of gender. This may include clothing, hairstyle, facial make-up, vocal inflection, posture, and behavior regardless of the individual's biological sex.

### **3D.0106.02 DEFINITIONS**

#### **3D.0106.02.01 SEXUAL HARASSMENT AND SEXUAL VIOLENCE**

Emporia State University prohibits sexual harassment as defined below. Sexual harassment is a form of sex discrimination that is illegal under Title VII of the Civil Rights Act of 1964 for employees, under Title IX of the Education Amendments of 1972 for students, and the Kansas Acts Against Discrimination. Retaliation against an individual for making a complaint of sexual harassment is also considered to be sex discrimination and is therefore likewise illegal. No member of the university community shall engage in sexual harassment. For the purposes of this policy sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

**Sexual Harassment:** "Sexual Harassment" means behavior, including physical contact, advances, and comments in person, through an intermediary, and/or via phone, text message, email, social media, or other electronic medium, that is unwelcome; based on sex or gender stereotypes; and is so severe, pervasive and objectively offensive that it has the purpose or effect of substantially interfering with a person's academic performance, employment or equal opportunity to participate in or benefit from University programs or activities or by creating an intimidating, hostile or offensive working or educational environment. Sexual Harassment may include but is not limited to:

1. unwelcome efforts to develop a romantic or sexual relationship;
2. unwelcome commentary about an individual's body or sexual activities;
3. threatening to engage in the commission of an unwelcome sexual act with another person;
4. stalking or cyberstalking;
5. engaging in indecent exposure, voyeurism, or other invasion of personal privacy;
6. unwelcome physical touching or closeness such as unnecessary touching, patting, hugging, or brushing against a person's body;
7. unwelcome jokes or teasing of a sexual nature or based upon gender or sex stereotypes; and
8. sexual violence, as defined below.

**Sexual Violence:** "Sexual violence" means any physical act which is sexual in nature that is committed by force or without the full and informed consent of all persons involved. Sexual violence may include but is not limited to rape, sexual assault, sexual battery, and sexual exploitation. Sexual violence can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual violence can be committed by men or by women, and it can occur between people of the same or different sex.

**Sexual Misconduct:** Any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation, coercion, or manipulation. Sexual misconduct can occur between persons of the same or different sex and is represented by a continuum of conduct from forcible rape and sexual assault to non-physical forms of pressure that compel individuals to engage in sexual activity against their will. It includes any physical contact of a sexual nature that is committed either by force, coercion, intimidation, or manipulation or through the use of a person's mental or physical incapacity, including incapacitation caused by the use of drugs or alcohol.

**Consent:** A freely and affirmatively communicated willingness to participate in sexual activity, expressed either by words or clear, unambiguous actions. It is the responsibility of the initiator of the sexual activity to ensure they have the other person's consent to engage in sexual activity. Consent must be present throughout the sexual activity by all parties involved. At any time, a participant can communicate that they no longer consent to the continuing activity.

Consent may never be:

- a. obtained through the use of force, coercion, intimidation, or manipulation or if the individual is mentally or physically disabled or incapacitated, including through the use of drugs and/or alcohol, or

- b. assumed because of the existence of a dating relationship between the persons involved or due to the existence of a current or previous sexual relationship between the persons.

**Dating Violence:** Violence that occurs between individuals who are in a dating relationship. For the purposes of this definition, “dating relationship” means a social relationship of a romantic nature. In addition to any other factors the university may consider the following when making a determination of whether a relationship exists or existed: nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

**Sexual Assault:** Includes any physical contact of a sexual nature that is committed either by force, coercion, intimidation, or manipulation or through the use of a person’s mental or physical incapacity, including incapacitation caused by the use of drugs or alcohol.

The following definitions, adapted from the Kansas Statutes, are used by university personnel when conducting an investigation of sexual misconduct. To access the original statute, please refer to <http://kslegislature.org/li/>.

**Domestic Violence** (K.S.A. 21-5111) The act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member.

“Family or household member” means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

**Sexual Intercourse** (K.S.A. 21-5501) “Sexual intercourse” means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse.

**Sodomy** (K.S.A. 21-3501) “Sodomy” means oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal.

**Rape** (K.S.A. 21-5503)

1. Knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:
  - a. when the victim is overcome by force or fear; or
  - b. when the victim is unconscious or physically powerless;
2. Knowingly engaging in sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;
3. Sexual intercourse with a child who is under 14 years of age;
4. Sexual intercourse with a victim when the victim’s consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or
5. Sexual intercourse with a victim when the victim’s consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender’s authority.

**Acquaintance Rape:** Rape which occurs by someone the victim knows.

**Stalking** (K.S.A. 21-5427) (a)

Stalking is:

1. Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person’s safety, or the safety of a member of such person’s immediate family and the targeted person is actually placed in such fear;
2. Engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct will place the targeted person in fear for such person’s safety or the safety of a member of such person’s immediate family; or

3. After being served with, or otherwise provided notice of, any protective order included in K.S.A. 21-3843, prior to its repeal or K.S.A. 2013 Supp. 21-5924, and amendments thereto, that prohibits contact with a targeted person, recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear.

**3D.0106.02.02 RACIAL AND/OR ETHNIC HARASSMENT** (revised, approved by President 5/7/2024)

Racial and/or ethnic harassment is a form of discrimination that is illegal under Title VI and Title VII of the Civil Rights Act of 1964. Title VI protects people from discrimination based on race, color or natural origin in programs or activities that receive Federal financial assistance. Title VII prohibits employment discrimination based on race, color, and natural origin. No member of the university community shall engage in racial or ethnic harassment. Retaliation against an individual for making a complaint of racial and/or ethnic harassment will be treated as a violation of the racial and/or ethnic harassment policy. For the purpose of this policy, racial and/or ethnic harassment is defined as ethnic slurs and other verbal or physical conduct relating to race, ethnicity, or racial affiliation that:

1. has the purpose or effect of creating an intimidating, hostile, or offensive work or academic environment;
2. has the purpose or effect of unreasonably interfering with an individual's work performance, academic performance, living environment, if residing in University housing, or participation in any university-sponsored activity;
3. otherwise adversely affects an individual's academic or employment opportunities; or
4. is not legitimately related to the subject matter of a course.

Racial and/or ethnic harassment may be blatant or subtle. Examples of the conduct that is prohibited include, but are not limited to:

- derogatory name calling or language based on cultural stereotypes;
- incidents or behaviors which are derogatory to a racial or ethnic group; or
- repeated ignoring or excluding of one's presence or existence in a University setting.

**3D.0106.02.03 OTHER HARASSMENT** (revised, approved by President 5/7/2024)

No member of the university community shall engage in harassment on the basis of age, color, religion, marital status, national origin, disability status, veteran status, sexual orientation, or on



any other factor that violates state or federal discrimination law. For the purposes of this policy, such aforementioned harassment is defined as unwelcome verbal and/or physical conduct which:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive work or academic environment;
2. Has the purpose or effect of unreasonably interfering with an individual's work performance, academic performance, living environment, if residing in University housing, or participation in any university-sponsored activity;
3. Otherwise adversely affects an individual's academic or employment opportunities; or,
4. Is not legitimately related to the subject matter of a course.

These other forms of harassment may be blatant or subtle. Examples of the conduct that is prohibited include, but are not limited to:

- Derogatory name calling or language on the basis of age, color, religion, marital status, national origin, disability status, veteran status, sexual orientation, or any other factor that violates state or federal discrimination law.
- Incidents or behaviors which are derogatory on the basis of age, color, religion, marital status, national origin, disability status, veteran status, sexual orientation, or any other factor that violates state or federal discrimination law.
- Repeated ignoring or excluding of one's presence or existence in the University setting.

### **3D.0106.03 ROLE OF THE AFFIRMATIVE ACTION OFFICER AND TITLE IX COORDINATOR (revised, approved by President 5/7/2024)**

The Affirmative Action Officer and/or designee will assist in the complaint process, however, is not permitted to be an advocate for either party and is obligated to assure fairness to both parties and to protect the University's interests.

The Title IX Coordinator will oversee investigations when the university receives a complaint regarding a violation of Title IX. See ESU Policy 3D.0108 Title IX Sexual Harassment, Discrimination, and Retaliation for Employees, Students and Visitors.

For inquiries regarding Affirmative Action and/or Title IX, contact the Executive Director of Human Resources and Affirmative Action or The Title IX Coordinator in the Office of Human Resources.

Inquiries may be made internally to:

a. ESU Affirmative Action Officer

Emporia State University, 1 Kellogg Circle, Plumb Hall, 211, Emporia, KS 66801  
Email: [report@emporia.edu](mailto:report@emporia.edu)  
Phone: 620-341-387

b. ESU Title IX Coordinator

Emporia State University, 1 Kellogg Circle, Plumb Hall, 209E, Emporia, KS 66801  
Email: [report@emporia.edu](mailto:report@emporia.edu)  
Phone: 620-341-5518

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)

c. 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

d. 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)

**3D.0106.04<sup>10</sup> GRIEVANCE PROCEDURES FOR FACULTY, STAFF, AND****STUDENTS** (revised, approved by President 5/7/2024)

Procedures for the resolution of complaints should be thorough yet expeditious to the extent possible. These procedures are specifically designed to process complaints which fall within the purview of the university's affirmative action and harassment and/or discrimination policies and which involve university personnel or students as principals. Complaints filed under these grievance procedures involve discrimination and/or harassment and shall not be used in addition to other existing university grievance procedures.

Emporia State University has an informal (except for sexual misconduct) and formal means to resolve complaints of harassment and/or discrimination. Informal complaints may be reported either in writing or orally whereby a resolution is agreed upon by both parties through informal means. Formal complaints must be reported in writing and result in a formal investigation, as described below. All complaints of harassment or discrimination should be reported to the Affirmative Action Officer and/or designee.

**A. Procedures**

These procedures pertain to the following discrimination complaints; race, religion, color, disability, national origin, ancestry, age, status as a veteran, sexual orientation, marital status, parental status, gender identity and gender expression. Any complaint that is sex based, including but not limited to sexual harassment, sexual violence, or other sexual misconduct shall be treated as sexual violence for all purposes and governed by ESU Policy 3D.0108 Title IX Sexual Harassment, Discrimination, and Retaliation for Employees, Students and Visitors.

**1. Discrimination Complaint Resolution Process**

Emporia State University will resolve discrimination complaints in a timely and effective manner and provide prompt corrective action if discrimination is believed to have occurred. The discrimination complaint resolution process is intended to provide effective resolution for complaints of discrimination on the basis of race (including racial harassment), religion, color, disability, national origin, ancestry, age, status as a veteran, sexual orientation, marital status, parental status, gender identity and gender expression. Affected persons, including students, faculty, staff, community members or others involved in University events or programs, may utilize the process to address complaints of discrimination related to University hiring and selection procedures, employment

---

<sup>10</sup> NOTE: This section replaces the previous “3D.0106.04 – Affirmative Action Advisory Council” section.

practices, conditions of employment, personnel actions, or University educational programs and activities.

2. Who may Utilize the University Discrimination Complaint Procedures

Any person claiming to be aggrieved by a prohibited discriminatory practice at Emporia State University may contact The Affirmative Action Officer or the Title IX Coordinator.

Individuals who may use this procedure include, but are not limited to: individuals applying for enrollment or employment with the university; students; faculty, including those with visiting appointments; teaching or research assistants; university support staff; unclassified employees; university administrators; and other persons receiving university services or participating in university programs. A person in the university community may ask the Office of Human Resources to initiate an investigation of a specific matter. The Office of Human Resources may also initiate an investigation when it has reason to believe that discriminatory or retaliatory action, has, or is occurring.

3. Complaint Resolution Actions and Procedures

The process for resolving discrimination complaints may include some or all of the following actions: informal inquiry and discussion, mediation (except in cases of sexual harassment), disciplinary action, or other appropriate action. If the subject matter or issue of the complaint does not fall within the jurisdiction of this policy, Human Resources staff will advise the complainant of other available procedures.

In many cases, individuals will take appropriate corrective action when they are made aware of how their actions or behaviors are being perceived. If the complainant is comfortable doing so, he or she may bring the concerns to the attention of the person responsible for the behavior or action. Complainants who choose not to address the discrimination directly on their own or through other informal processes may seek the assistance of the Office of Human Resources, phone 620-341-5379.

4. Who Must Report Discriminatory Actions

Responsible employees serving in leadership roles in the University are responsible for nondiscrimination in their employment, academic environments, and co-curricular living and learning environments. Deans, directors, chairpersons, or other administrators or supervisors, including faculty members, graduate teaching assistants, and academic advisors shall contact the Affirmative

Action Officer and/or designee to initiate an investigation within their area of responsibility if they know or have reason to believe that discriminatory practice(s) may have occurred.

Responsible employees are obligated to report complaints of harassment, sexual violence and/or discrimination to the Affirmative Action Officer and/or designee and/or Title IX Coordinator. In some instances, the responsible employee may have addressed the complaint; however, the obligation to report to the Affirmative Action Officer and/or designee/Title IX Coordinator still exists. Complaints must be filed within 180 calendar days of the alleged behavior, remain confidential, and will not be disclosed to anyone who does not have a need to know, to the extent possible to resolve.

All other complaints containing an allegation of sexual violence may be made at any time without limitation.

#### Responsible Employees

Any employee of Emporia State University who a student could reasonably believe to have the authority or duty to take action to address sexual violence excluding any employee bound by privilege and confidential relationships, such as licensed counselors or legal counsel.

An employee who has been given the duty of reporting incidents of sexual violence or any other misconduct by students, faculty, staff, and others to the Title IX Coordinator or other appropriate school designee.

#### 5. Complaint

An individual who believes that they have been the subject of discrimination or retaliation, or a dean, director, chairperson or other supervisor or administrator who has reason to believe that discrimination or retaliation may have occurred, should contact the Affirmative Action Officer and/or designee located in the Office of Human Resources to initiate the filing of a complaint. A complaint should include the following, to the extent known and available:

- Name and contact information (address, telephone, email) for the complainant;
- Name of person(s) directly responsible for the alleged discrimination or retaliation;
- Date(s), time(s), and place(s) of the alleged violation(s);
- Nature of the alleged violation(s); i.e., race, sex, disability discrimination or retaliation, etc.;

- Detailed description of the specific conduct that is the basis of the alleged violation(s);
- Copies of any documents or other tangible items pertaining to the alleged violation(s);
- Names and contact information for any witnesses to the alleged violation(s);
- Any other relevant information.

Upon receiving a complaint, the Office of Human Resources will provide the complainant with an acknowledgment of receipt within 7 working days and will include in that acknowledgment the web address where the Discrimination Complaint Resolution Process can be found.

#### 6. Complaint Evaluation

Upon receiving a complaint, the Office of Human Resources will conduct an initial evaluation of the merits of the complaint and determine the appropriate investigatory action required. The Office of Human Resources will contact the dean, director, administrator, supervisor, or chairperson responsible for the unit to inform them of the filing of the complaint. When necessary, appropriate administrator(s) or faculty member(s) may be designated by the President, Provost, Vice Presidents, Dean, Director, or Chairperson or by the Executive Director of Human Resources, to participate in the evaluation of the complaint and to facilitate necessary action.

#### 7. Informal Resolution for Harassment and Discrimination (Excluding Sexual Violence)

Both parties must voluntarily agree to participate in this process. The complainant has the right to end the informal process at any time and begin the formal process.

- a. The individual making the complaint ("the complainant") should first discuss the allegation(s) with the individual(s) perceived as harasser(s). It is understood that in some circumstances this step would not be possible or advisable.
- b. If the discussion does not lead to a resolution or the complainant elects not to exercise the first step, the complainant may elect to discuss the allegation(s) with the department chair or director (hereafter referred to as the "responsible administrator") supervising the faculty, staff, or student alleged to be engaging in the discriminatory or harassing behavior. For

students with complaints of harassment or discrimination by other students, the responsible administrator would be the Dean of Students.

- c. The responsible administrator should conduct an inquiry into the matter. If a reasonable basis is determined, an attempt will be made to bring about a resolution to which both the complainant and the respondent(s) agree. If the responsible administrator is already aware of the behavior that is the subject of the complaint, the complainant should contact the Affirmative Action Officer and/or designee. It is expected that informal resolution will be handled expeditiously and completed within a reasonable length of time. The Affirmative Action Officer and/or designee is available for assistance in this process.
  - d. If a mutually satisfying resolution is not reached, or if the complainant elects not to pursue the informal resolution process, a formal complaint may be filed to begin the Formal Resolution process.
8. Formal Resolution for Harassment and Discrimination (Excluding Sexual Violence)
- a. The complainant should file a complaint with the Office of Human Resources. The complainant will complete a Formal Complaint form providing the basis of the alleged harassment and/or discrimination, a description of the incident(s) related to the alleged discrimination, and the remedy desired. The Affirmative Action Officer and/or designee will conduct an interview with the complainant to clarify and get a thorough understanding of the complaint. A formal complaint should generally be resolved within 60 calendar days, though extensions may be generated for good cause at the discretion of the Affirmative Action Officer and/or designee.
  - b. The Affirmative Action Officer and/or designee will meet with the respondent as soon as possible and give them a verbal explanation and a written statement of the complaint. The respondent will then have the opportunity to respond. The respondent will be cautioned about retaliation and a follow-up meeting to discuss their response will be scheduled. Following the initial meeting the respondent will have 5 working days to give their formal, written response to the complaint.
  - c. At the follow-up meeting with the respondent, the Affirmative Action Officer and/or designee will review the respondent's written response and

conduct an interview to clarify and get a thorough understanding of their response.

- d. In addition to interviews with the complainant and the respondent, the Affirmative Action Officer and/or designee may interview other parties who have specific knowledge about the alleged incident(s). Individuals who are interviewed will be informed that confidentiality must be maintained and the fact that an investigation is underway should not lead to any conclusions or assumptions. These interviews will be conducted within 30 calendar days of receipt of the 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 30 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.
- e. The Affirmative Action Officer and/or designee will meet with one or more of the decision-makers of the University, to share the details of the complaint. The decision-makers are a group of Vice Presidents and their committees, who are trained in their role as decision-makers. The Affirmative Action Officer and/or designee will define the area of harassment and/or discrimination involved in the complaint and clarify the review criteria for evaluation of evidence. The decision-makers will be given a verbal explanation and/or written statement of the complaint, the response, and the findings of the Affirmative Action Officer and/or designee's investigation and will be provided with the opportunity to review the written materials or evidence. At the discretion of the Affirmative Action Officer and/or designee, the decision-maker may be provided with the services of an attorney for the purpose of consultation.
- f. A time and place convenient for all concerned parties will be set for the hearing by the Affirmative Action Officer and/or designee. If both parties request not to have a hearing, then the investigation findings from the Affirmative Action Officer and/or designee will be handed off to the decision-makers. Both parties and the Affirmative Action Officer and/or designee must agree to waive the hearing process for this to occur. In the case of a hearing both the complainant and the respondent will have the opportunity to bring witnesses to testify. A list of witnesses and any other



evidence needs to be submitted to the Affirmative Action Officer and/or designee at least 5 working days before the hearing date. The complainant and the respondent have the right to invite another individual to serve as an advisor during the hearing. The advisor is present solely to advise the represented party. The advisor shall not directly address or communicate with the decision-makers or other parties involved in the hearing, nor shall they speak on the behalf of the individual being advised.

- g. 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. 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, or before the investigation is handed to the decision-makers if no hearing is being used. 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 decision 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, or before the investigation findings will be handed off to the decision-makers if no hearing is being used. 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.

If a report is made by any party or by the Title IX Coordinator themselves, that the Title IX Coordinator has a bias or conflict of interest then those reports will be sent to General Counsel. The Title IX Coordinator will only be removed if General Counsel concludes that their bias or conflict of interest precludes an impartial investigation of the allegation(s).

- h. The Affirmative Action Officer and/or designee will facilitate the hearing. The complainant will present their testimony and/or evidence followed by

the respondent. Decision-Makers have the right to question all parties involved, while the complainant and respondent have the right to question witnesses. The complainant and respondent will both be given the opportunity to respond to comments made by the other.

- i. Following the hearing the decision-makers has 20 working days to submit a written report of its recommendation, signed by all members, to the Affirmative Action Officer and/or designee. Each decision-maker will use the preponderance of evidence when making their decisions. This report will include a recommendation concerning the disposition of the complaint. A decision-makers may append to the report a dissent or non-concurrence with the majority opinion. The Affirmative Action Officer and/or designee work with the decision-maker to prepare a Notice of outcome letter. The Affirmative Action Officer and/or designee will then share the letter with both parties within 5 business days of receiving the decision-makers(s) written report.
  - j. If either the complainant or respondent does not believe the resolution is satisfactory, a review may be requested. A written appeal of the final recommendation must be received in the President's Office within 30 days of the individual's receipt of outcome letter. The President will respond within 30 days after receiving the written appeal.
9. For the Formal Resolution Process for Sexual Violence Complaints, see ESU Policy 3D.0108 Title IX Sexual Harassment, Discrimination, and Retaliation for Employees, Students and Visitors.
  10. Prohibition Against Retaliation

Retaliation against persons who file discrimination complaints or persons who participate in an investigation of a complaint, whether by an individual directly involved or by their associates, is a violation of University and Board of Regents policy as well as State and Federal law. Complainants who utilize these procedures or persons who participate in an investigation of a complaint should not be subjected to retaliation. Retaliation may take the form of unwanted personal contact from the respondent or giving additional assignments that are not assigned to others in similar situations, poor grades or unreasonable course assignments. Phone calls, email or other attempts to discuss the complaint may be perceived as retaliation under certain circumstances. Disciplinary action, harassment, unsupported evaluations, or other adverse changes in the conditions of employment or the educational environment may also constitute retaliation.

Retaliation will not be tolerated and could result in suspension, reassignment, salary reduction, termination, expulsion or other disciplinary action.

11. Investigation

A formal investigation will be initiated if a complaint is complete, timely, within the scope of this policy and articulates sufficient facts, which if determined to be accurate, would support a finding that the University's discrimination policies have been violated. Those assigned to conduct an investigation will be impartial. In conducting investigations into violations of the University's policies, the Office of Human Resources will use a preponderance of the evidence standard in making factual determinations. A preponderance of the evidence standard means the fact(s) in issue is more probably true than not.

12. Investigation Timeframe

The University will strive to complete discrimination 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.

13. Access to Information

Emporia State University will control access to information pertaining to reports, investigations, and outcomes of sexual violence complaints by means appropriate to the circumstances. The institution follows all local, state, and federal mandates regarding privacy and confidentiality.

14. Investigation Procedure

The investigation will include the following steps:

a. Notice to Respondent

The respondent will be provided with a statement of the complaint in writing, and the complainant will be provided a copy of this notification. The respondent will be provided an opportunity to meet with the investigator(s) investigating the complaint and to respond to the allegation. Respondents may respond in person or in writing within 5 working days

unless determined by the investigator individual needs extra time. If a respondent chooses not to participate or refuses to answer a complaint, their nonparticipation will not prevent the investigation from proceeding and could result in a finding based solely on the information provided by the complainant.

b. Notice Regarding Retaliation

All parties to a complaint (complainant, respondent, witnesses, and appropriate administrators or supervisors) will be informed that retaliation by an individual or their associates against any person who files a complaint or any person who participates in the investigation of a complaint is prohibited. Individuals who engage in retaliation are subject to disciplinary action, regardless of the disposition of the underlying complaint.

c. Contact with Complainant

If the investigator did not speak with the complainant at the time that the complaint was received by the Office of Human Resources, the investigator will meet or speak with the complainant at the start of the investigation. In all investigations, the investigator will meet with the complainant throughout the investigation as appropriate.

d. Representation

In any meeting with the investigators, the parties to the complaint (complainant and the respondent) may bring a representative/advisor to the meeting. The complainant and the respondent have the right to invite another individual to serve as an advisor during the hearing. The advisor is present solely to advise the represented party. The advisor shall not directly address or communicate with the investigator or other parties involved in the investigation and/or hearing, nor shall they speak on the behalf of the individual being advised.

e. Information Relevant to Investigation

The parties to a complaint (complainant and respondent) will be informed that they have the opportunity to identify witnesses, present witness statements, and any other evidence they believe relevant to resolution to the complaint. The investigator(s) will interview other people whom the investigator(s) in their discretion determines to be necessary to gather relevant information. The investigator will review any written materials,

emails or other media that as determined by the investigator in their discretion may provide relevant information regarding the complaint.

f. Findings of Investigation

The investigator(s) will provide a written summary of their findings to the respondent and the complainant within a reasonable time following the conclusion of the investigation. In addition, the investigator(s) will provide a written report of the investigation findings and recommendations to the appropriate administrators within the University who will determine the appropriate action to be taken in light of the investigation findings and recommendations. The administrators will have 20 working days from receipt of the investigation findings and recommendations to determine, in consultation with the Office of Human Resources, an appropriate resolution(s). Upon making a decision, the administrator(s) will simultaneously provide written notification of the decision to both the respondent and complainant.

15. Sanctions

Behaviors and actions that violate this policy, including sexual harassment, can be subject to investigation and sanctions. Sanctions can include:

- A. Warning
- B. Restitution
- C. Fines
- D. Disciplinary Probation
- E. Campus/Community Service
- F. Student Suspension
- G. Student expulsion
- H. Employee Suspension
- I. Employee Termination

16. Supportive Measures

Individualized supports to help address barriers to campus life they are facing in connection with their experience. These actions may include, but are not limited to:

- A. Referring to counseling, medical, and/or other healthcare services
- B. Referring to the Employee Assistance Program
- C. Assisting with visa and immigration

- D.** Counseling for student financial aid
- E.** Referring to community-based service providers
- F.** Altering campus housing assignment(s)
- G.** Altering work arrangements for employees or student-employees
- H.** Preparing a safety plan
- I.** Providing campus safety escorts
- J.** Supporting no contact directives between the parties
- K.** Providing academic support, extensions of deadlines, or other course/program-related adjustments
- L.** Issuing a University No Trespass notice
- M.** Issuing timely warnings
- N.** Modification of class schedule, withdrawals, or leaves of absence
- O.** Increasing security and monitoring of certain areas of the campus
- P.** Any other actions deemed appropriate by the Title IX Coordinator

17. Remedies

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Affirmative Action Officer and/or designee 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 the Employee Assistance Program (EAP)
- ii.** Referral to counseling and health services
- 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.

18. Appeals – Finding of Discrimination or Retaliation with Imposition of Discipline

1. Respondent: If formal disciplinary action is imposed as a result of a finding of violation of the University’s policies prohibiting discrimination, sexual harassment, and/or retaliation, the respondent may appeal.
2. Complainant: If formal disciplinary action is not imposed as a result of not finding a violation of the University’s policies prohibiting discrimination, sexual harassment, and/or retaliation, the complainant may appeal.
3. Appeals Process: Appeals by either respondent or complainant are presented to the Vice President for Administration and Fiscal Affairs, or in the case of a student, the Vice President for Student Affairs within 10 working days of the date of the notice of the investigator’s findings. The request for an appeal must be a signed, written document articulating why the investigator’s conclusions and findings and/or process were erroneous. The Vice President(s) will respond to the request for appeal within 20 working days of receiving the appeal. The Vice President(s) decision on appeal will constitute final agency action and there will be no further appeal within the University.

B. Administrative Closure of a Complaint without Investigation

The University may not proceed with a complaint investigation under a variety of circumstances, for instance:

- A complainant, even after contact and follow up with an investigator, fails to describe in sufficient detail the conduct that is the basis of the complaint;
- The conduct alleged in the complaint is not covered by this policy;
- The complaint is untimely;
- The complainant refuses to cooperate with the University’s investigation;
- The complainant is anonymous.

If it is determined that the University will not proceed with investigation of a complaint, the Affirmative Action Officer and/or designee will notify the complainant (if not anonymous) in writing explaining the reasons why the complaint is not being investigated. The notification letter will include a statement notifying the complainant that they may appeal the determination not to proceed

with an investigation of the complaint to the Vice President and Chief Operations Officer, or if a student, the Vice President, Student Life within 10 working days of the notice. The request for an appeal must be a signed, written document articulating why the decision to administratively close the complaint without an investigation was in error. The appropriate Vice President will respond to the request for appeal within 20 working days of receipt of the appeal. If the decision to administratively close the complaint without an investigation is overturned, the complaint will be sent back to the Office of Human Resources for investigation in accordance with this procedure. If the decision to administratively close the complaint without an investigation is upheld, then that decision will constitute final agency action and there is no further appeal within the University.

C. Extensions of Time

The Office of Human Resources will make every reasonable attempt to adhere to the time limits set forth in these procedures. However, it is recognized that circumstances may necessitate an extension of time. Therefore, the Executive Director of Human Resources may extend the time limits set forth in these procedures.

D. Abuse of the Discrimination Complaint Resolution Process

The University takes all discrimination complaints seriously. However, knowingly filing a false complaint is considered serious misconduct and is also subject to sanction. An individual who establishes a pattern of repeatedly filing frivolous complaints that harass colleagues and/or abuse the complaint resolution process may lose the right to file complaints for a specified period of time.

E. Confidentiality

It is the responsibility of the Affirmative Action Officer and/or designee and the responsible administrator to whom a complaint is brought to maintain confidentiality while still allowing for an investigation, providing a remedy for individuals injured by discrimination or harassment, and allowing respondents to reply to complaints. Individuals involved in the investigation or hearing are also obligated to maintain confidentiality. The University cannot guarantee complainants, respondents, or witnesses absolute confidentiality because the University is obligated to investigate complaints.

F. Accommodations

Reasonable accommodations will be made for persons with documented disabilities. Involved parties with disabilities should contact the Affirmative



Action Officer and/or designee at least 3 days prior to the hearing so that accommodations can be made during the process. Students may contact the Director of Student Accessibility and Support Services and/or the Affirmative Action Officer and/or designee at least 3 days prior to the hearing so that accommodations can be made. All communication between students, the Office of Student Accessibility and Support Services, and the Affirmative Action Officer and/or designee will be strictly confidential.