

EMPORIA STATE UNIVERSITY TITLE IX PROCEDURES

Effective August 14, 2020

1) INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF ESU TITLE IX POLICY

a) Notice/Complaint

- i) Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the University initiates a prompt initial assessment to determine the next steps the University needs to take.
- ii) The University will initiate at least one of three responses:
 - (1) Offering supportive measures because the Complainant does not want to proceed formally;
 - (2) An informal resolution;
 - (3) A formal grievance process including an investigation and a hearing.
- iii) The investigation and grievance process will determine whether or not the Policy has been violated. If so, the University will promptly implement remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

b) Initial Assessment

- i) Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator, or designee, engages in an initial assessment. The steps in an initial assessment can include:
 - (1) 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.
 - (a) 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.
 - (2) 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.
 - (3) The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
 - (4) The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
 - (5) 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. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify appropriate and desired remedies, and then

seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.

- ii) If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, whether an informal process may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
- iii) If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - (1) If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - (a) An incident, and/or
 - (b) A pattern of alleged misconduct, and/or
 - (c) A culture/climate issue, based on the nature of the complaint.
 - (2) If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable and will refer the matter accordingly. Or refers the matter for resolution under other university policy(s). Please note that dismissing a complaint under Title IX is procedural and does not limit the University’s authority to address a complaint with an appropriate process and remedies.

c) Violence Risk Assessment

- i) In many cases, the Title IX Coordinator may determine that a Broader Campus Safety Risk Assessment (BCRA) should be conducted by member of the CARE team if the Respondent is a student or student employee as part of the initial assessment. A BCRA aids in ten critical and/or required determinations, included in the Title IX Policy.
- ii) 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.
- iii) More about the University’s process for BCRA can be found below/in Appendix B.

d) Dismissal (Mandatory and Discretionary)

- i) The University must dismiss a formal complaint or any allegations 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 the Policy hereinabove, even if proved; and/or
 - (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), and/or the University does not have control of the Respondent; and/or

- (3) The conduct did not occur against a person in the United States; and/or
 - (4) 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.
- ii) The University may dismiss a formal complaint or any allegations 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; or
 - (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 complaint or allegations therein.
 - iii) Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.
 - iv) This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate and refile it.
- e) **Counterclaims**
- i) The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim and made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposed of retaliation. Counterclaims made with retaliatory intent will not be permitted.
 - ii) 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.
 - iii) 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.
- f) **Right to an Advisor**
- i) The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution 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.
 - ii) The law permits one Advisor for each party.
 - iii) Witnesses are not entitled to Advisors within this grievance process; however, they may be advised externally.

- iv) The chosen Advisor should be eligible and available. A party cannot insist on an Advisor who doesn't have the inclination, time or availability.
- v) The Advisor cannot have institutionally conflicting roles, for example, the Title IX Coordinator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.
- vi) Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).
- vii) 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.
- viii) Who can serve as an advisor:
 - (1) 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.
 - (2) 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.
 - (3) If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.
 - (4) Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.
- ix) Advisors in Hearings/University-Appointed Advisor
 - (1) Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, and must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses.
 - (2) 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.
 - (3) A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, the University will appoint an Advisor who will do so regardless of the participation or non-participation of the advised party in the hearing itself.
 - (4) Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

x) Advisor's Role

- (1) 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.
- (2) Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.
- (3) 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.

xi) Pre-interview Meetings

- (1) 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.

xii) Advisor Violations of University Policy

- (1) All Advisors are subject to the same University policies and procedures, whether they are attorneys or not.
- (2) Advisors are expected to advise their advisees without disrupting proceedings.
- (3) Advisors should not address University officials in a meeting or interview unless invited to (asking procedural questions).
- (4) 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.
- (5) 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.
- (6) Any Advisor who oversteps their role as defined by this policy will be warned only once.
 - (a) 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.
 - (b) Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.
- (7) Sharing information with the Advisor
 - (a) 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. 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.

- (b) 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.
 - (c) 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.
 - (ii) These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University.
 - (iii) 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.
- (8) Expectations of an Advisor
- (a) 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.
 - (b) 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.
- (9) Expectations of the Parties with Respect to Advisors
- (a) 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).
 - (b) 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.
 - (c) As a public entity, the University fully respects and accords the Weingarten rights of employees. For parties who are entitled 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.

- (10) Assistance in Securing an Advisor
- (a) For representation, Respondents may wish to contact organizations such as:
 - (i) FACE (<http://www.facecampusequality.org>)
 - (ii) SAVE (<http://www.saveservices.org>)
 - (b) Complainants may wish to contact organizations such as:
 - (i) The Victim Rights Law Center (<http://www.victimrights.org>)
 - (ii) The National Center for Victims of Crime (<http://www.victimsofcrime.org>)
 - (iii) Time's Up Legal Defense Fund (<http://nwic.org/times-up-legal-defense-fund/>)

2) RESOLUTION PROCESS

a) Privacy of Resolutions Proceedings

- i) Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy.
- ii) While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. The University encourages parties to discuss this with their Advisors before doing so.

b) Informal Resolution

- i) 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.
- ii) To initiate Informal Resolution, a Complainant must file a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they must contact the Title IX Coordinator in writing to so indicate.
- iii) 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.
- iv) Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including

information regarding any records that will be maintained or shared by the University.

- v) 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.
 - vi) 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. All parties must consent to the use of the Informal Resolution process.
 - vii) 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.
 - viii) The Title IX Coordinator shall determine whether the Informal Resolution process is appropriate, and the Title IX Coordinator must approve any resolution agreement reached as a result of the Informal Resolution process.
 - ix) The Title IX Coordinator maintains records of any resolution agreement reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions.
 - x) Results of complaints resolved by Informal Resolution are not appealable.
 - xi) The Informal Resolution agreement is not final until it is signed by all parties and the Title IX Coordinator.
- c) **Respondent's Acceptance of Responsibility**
- i) The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process.
 - ii) 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.
 - iii) 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.
 - (1) 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.

- iv) This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution.
- v) When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.
- vi) 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.

d) Negotiated Resolution

- i) 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.
- ii) Negotiated Resolutions are not appealable.

e) Grievance Process Administrator Training

- i) Grievance Process Administrators receive annual training. This training includes but is not limited to:
 - (1) The scope of the University's Discrimination and Harassment Policy and Procedures
 - (2) Implicit bias
 - (3) Disparate treatment and impact
 - (4) Reporting, confidentiality, and privacy requirements
 - (5) Applicable laws, regulations, and federal regulatory guidance
 - (6) How to implement appropriate and situation-specific remedies
 - (7) How to investigate in a thorough, reliable, and impartial manner
 - (8) How to uphold fairness, equity, and due process
 - (9) How to weigh evidence
 - (10) How to conduct questioning
 - (11) How to assess credibility
 - (12) Impartiality and objectivity
 - (13) How to render findings and generate clear, concise evidence-based rationales
 - (14) The definitions of all offenses
 - (15) How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
 - (16) How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

- (17) Any technology to be used at a live hearing
 - (18) Issues of relevance of questions and evidence
 - (19) How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- ii) Specific training is also provided for Appeal Officers, intake personnel, Advisors (who are University employees). All grievance process administrators are required to attend these trainings annually. The materials used to train all members are available on the ESU Title IX website.

3) **FORMAL GRIEVANCE PROCESS**

a) **Notice of Investigation and Allegations**

- i) The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.
- ii) The NOIA will include:
 - (1) A meaningful summary of the allegations,
 - (2) The identity of the involved parties (if known),
 - (3) The misconduct being alleged,
 - (4) The date and location of the alleged incident(s) (if known),
 - (5) The specific policies implicated,
 - (6) A description of the applicable procedures,
 - (7) A statement of the potential sanctions/responsive actions that could result,
 - (8) A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
 - (9) 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,
 - (10) A statement about the University’s policy on retaliation,
 - (11) Information about the privacy of the process,
 - (12) Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
 - (13) A statement informing the parties that the University’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
 - (14) Detail on how the party may request disability accommodations during the interview process,
 - (15) A link to the University’s Title IX website,

- (16) 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
 - (17) An instruction to preserve any evidence that is directly related to the allegations.
- iii) 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.
 - iv) Notice will be made in writing and may be delivered by email to the parties' University-issued email or designated accounts. Once emailed, notice is presumptively delivered.
- b) Resolution Timeline**
- i) The University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.
- c) Appointment of Investigator**
- i) Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an investigator, if the Title IX Coordinator is not the investigator, usually within two (2) business days of determining that an investigation should proceed.
- d) Ensuring Impartiality**
- i) Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, CARE Team, and Decision- maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.
 - ii) The Title IX Coordinator will vet the assigned Investigator to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another individual will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Office of the General Counsel.
 - iii) The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.
 - iv) The University operates with the presumption that the Respondent is not

responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of the evidence.

e) **Investigation Timeline**

- i) Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.
- ii) The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

f) **Delays in the Investigation Process and Interactions with Law Enforcement**

- i) The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.
- ii) The University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will resume its investigation and resolution process as soon as feasible. During such a delay, University will implement supportive measures as deemed appropriate.
- iii) The University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

g) **Steps in the Investigation Process**

- i) 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.
- ii) 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.
- iii) The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):
 - (1) Determine the identity and contact information of the Complainant
 - (2) In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
 - (3) Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of the specific policies implicated
 - (4) Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all

witnesses and the parties

- (5) Prepare the Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
- (6) Notice should inform the parties of their right to an Advisor, who could be provided by the University for the purpose of cross examination or an Advisor of their choosing present for all meetings attended by the party
- (7) 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
- (8) 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
- (9) Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- (10) 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
- (11) Complete the investigation promptly and without unreasonable deviation from the intended timeline
- (12) Provide regular status updates to the parties throughout the investigation
- (13) Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence, including relevant physical or documentary evidence.
- (14) 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.
- (15) 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).
- (16) 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.
- (17) 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.

(18) If the investigator is not the Title IX Coordinator, the investigator shares the report with the Title IX Coordinator for their review and feedback.

(19) 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.

h) Role and Participation of Witnesses in the Investigation

- i) Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.
- ii) While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.
- iii) Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

i) Recording of Interviews

- i) Interviews are not audio and/or video recorded. No unauthorized audio or video recording of any kind is permitted during investigation meetings. Parties and witnesses will be provided with written summaries of their interviews to review after meeting with the Coordinator or Investigator, upon request.

j) Evidentiary Considerations in the Investigation

- i) 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, the investigation does not consider:
 - (1) incidents not directly related to the possible violation, unless they evidence a pattern;
 - (2) the character of the parties; or
 - (3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior

k) Referral for Hearing

- i) Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.
- ii) The hearing 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.
- iii) 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.

l) Hearing Decision-maker Composition

- i) 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.
- ii) 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.
- iii) 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.
- iv) 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.

m) Evidentiary Considerations in the Hearing

- i) Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) 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.
- ii) 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.
- iii) 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.

iv) 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.

n) **Notice of Hearing**

i) 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. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

ii) The notice will contain:

- (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 Decision-maker(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) A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- (8) 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.
- (9) A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.
- (10) 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.
- (11) 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.

(12) Whether parties may bring mobile phones/devices into the hearing.

- iii) 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.
- iv) 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.

o) Alternative Hearing Preparation Options

- i) 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.
- ii) 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.

p) Pre-Hearing Preparation

- i) 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.
- ii) 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.
- iii) 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).
- iv) 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.

- v) 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.

q) **Pre-Hearing Meetings**

- i) 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.
- ii) 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.
- iii) 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.
- iv) The pre-hearing meeting(s) will be recorded.

r) **Hearing Procedures**

- i) 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.
- ii) 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.
- iii) The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.
 - iv) 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.
- s) **Joint Hearings**
- i) 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.
 - ii) 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.
- t) **The Order of the Hearing – Introductions and Explanation of Procedure**
- i) 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.
 - ii) 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 hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.
- u) **Investigator Presents the Final Investigation Report**
- i) 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.
 - ii) 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.
- v) **Testimony and Questioning**
- i) 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”).

- ii) 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.
- iii) 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.

w) Refusal to Submit to Cross Examination and Inferences

- i) If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.
- ii) 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.
- iii) 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.
- iv) 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 the 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.
- v) If a party’s Advisor of choice refuses to comply with the University’s established rules of decorum for the hearing, the University may require the party to use a

different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

x) **Recording Hearings**

- i) Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.
- ii) 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.

y) **Deliberation, Decision-Making and Standard of Proof**

- i) 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.
- ii) 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).
- iii) 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.
- iv) 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).
- v) 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.
- vi) 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.

z) **Notice of Outcome**

- i) 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.
- ii) 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.

- iii) 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.
 - iv) 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).
 - v) 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.
- 4) **STATEMENT OF THE RIGHTS OF THE PARTIES (SEE TITLE IX POLICY APPENDIX A)**
- 5) **SANCTIONS**
- a) **Factors in Determining Appropriate Sanction/Responsive Action**
 - i) Factors considered when determining a sanction/responsive action may include, but are not limited to:
 - (1) The nature, severity of, and circumstances surrounding the violation(s);
 - (2) The Respondent's disciplinary history;
 - (3) Previous allegations or allegations involving similar conduct;
 - (4) The need for sanctions/responsive actions to bring an end to, prevent future recurrence of, and/or remedy the effects of the discrimination, harassment, and/or retaliation;
 - (5) The impact on the parties;
 - (6) Any other information deemed relevant by the Decision-maker(s).
 - ii) The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.
 - iii) The sanctions described in this policy may be in addition to, other actions or

sanctions imposed by external authorities.

- b) **Student Sanctions** – The following are the usual sanctions that may be imposed upon students or organizations singly or in combination.
- i) **Disciplinary Warning** – This written warning is provided to acknowledge that the Respondent's behavior violated University policy and does not align with Emporia State University's expectations for community members. Another breach of University policy and/or if the Respondent is found responsible for any future violations of University and/or other policy, offenses, it may result in severe disciplinary action.
 - ii) **Disciplinary Probation** – The student is deemed not in good conduct standing with the University. The duration of any probationary period will be determined by the resolution body on a case-by-case basis. Any further violations of University policy while on probation may result in more serious sanctions being imposed, which may include suspension or expulsion from the University. Restrictions that may be placed on the student during the probationary period include, but are not limited to: participation in student activities, representation of the University on athletic teams or in other leadership positions, eligibility to receive any University award or honorary recognition, entrance into University residence halls or other areas of campus, participation in a study abroad program, or University computer and network usage.
 - iii) **Suspension** – The student is required to leave the University for a designated time. During the suspension period, a student may not attend classes (either in person or online) nor participate in a student group or student organization activities, whether they occur on or off-campus. A currently enrolled student is withdrawn from their classes and is not eligible for a refund. A registration and records hold will be placed on the student's account until the conclusion of the suspension period. If the student is an on-campus resident, the student's contract with Housing & Residence Life will also be terminated and the student will be responsible for paying any remaining fees for the duration of the original contract period. The student must complete all assigned educational sanctions before the conclusion of the suspension period. The suspension will remain in effect until they are completed. Any further violations of University policy while on suspension could result in more serious sanctions being imposed.
 - iv) **Expulsion** – The student is separated from the University without the possibility of graduation or future enrollment. The student is not allowed on University premises unless authorized in writing in advance under conditions approved by the Vice President for Student Affairs or their designee. A currently enrolled student is withdrawn from their classes and is not eligible for a refund. A permanent registration hold is placed on the student's account. If the student is an on-campus resident, the student's contract with Housing & Residence Life is terminated and the student is responsible for paying any remaining fees for the duration of the original contract period.
 - v) **Dismissal** – Dismissal removes a student from their academic program and separates the student from the University for a period of two to seven years. During the dismissal, the student is not allowed on University premises unless

authorized in writing in advance under conditions approved by the Vice President for Student Affairs or their designee. A currently enrolled student is withdrawn from their classes and is not eligible for a refund. A permanent registration hold is placed on the student's account. If the student is an on-campus resident, the student's contract with Housing & Residence Life is terminated and the student is responsible for paying any remaining fees for the duration of the original contract period.

- (1) Following the Dismissal, the individual must apply for readmission to the University. Readmission is not guaranteed. Readmission will only be considered when the provisions of subsections a-c (below) are met.
 - (a) Duration of Dismissal is complete
 - (b) All educational sanctions are completed
 - (c) Petition for readmission is submitted to the review committee (see below)
 - (2) The review committee includes the Vice President for Student affairs and the Dean of Students, or their designee(s). Other individuals may include but are not limited to representatives from Housing and Residence Life, the Title IX Coordinator, or Student Involvement. There must be a minimum of 3 individuals who serve on the review committee. Readmission will be granted upon a majority vote.
 - (3) If readmission is approved, the committee may apply additional restrictions. These may include, and are not limited to, restricted access to campus and/or other specified activities for the duration of the student's enrollment at the university.
 - (4) If readmission is denied, the individual may reapply for readmission one (1) year after the initial application for readmission was received by the university.
- vi) ***Withholding of Transcripts or Degree*** – The University may withhold copies of student transcripts or awarding a degree otherwise earned until the completion of the process outlined in the Policy, including the completion of all assigned sanctions.
- vii) ***Revocation of Admission and/or Degree*** – Admission to the University or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violation of University policy in obtaining the degree from or gaining admission to the University or for other serious violations committed by a student before graduation.
- viii) ***Loss of University Privileges*** – The student is restricted from accessing specific University privileges including, but not limited to: parking on campus, participation in student activities, holding a student leadership position, participation in a study abroad program, and University computer and network access.
- ix) ***Residence Hall Transfer or Removal*** – The student will be placed in another room or residence hall or restricted from living on campus for a specified or indefinite period. If a student is restricted from living on campus, the student's Housing and Residence Life contract will be terminated and the student will be

- responsible for paying any remaining fees for the duration of the original contract period.
- x) **No Contact Directive** – The student is prohibited from intentional direct or indirect contact with another person or group or their property via any means, including, but not limited to: personal contact, electronic communication (e.g. text messages, social media, etc.), telephone, or through third parties.
 - xi) **Campus and/or Building Ban** – The student is prohibited from being on any campus property and/or entering specific University facilities. Any student alleged to have violated a campus and/or building ban may be subject to additional disciplinary action.
 - xii) **No Trespass Order** – The student is prohibited from being on any campus property and/or entering specific University facilities. Any student alleged to have violated a campus and/or building ban may be subject to arrest.
- c) **Employee Sanctions** – Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:
- i) **Corrective Action** - Official written notification of unacceptable behavior and violation(s) of University policy. The written documentation becomes part of the employee's personnel file.
 - ii) **Suspension** - An employee may be suspended without pay. The length of suspension will be dependent upon the severity of the violation and will range in length from three (3) to thirty (30) University business days.
 - iii) **Separation** - An action ending the employment relationship.
 - iv) **Job Reassignment** - An employee may be moved temporarily or permanently to a different position or to a different work location. This position may or may not be an equivalent level to their current position.
 - v) **Loss of University Privileges** - An employee may be restricted from accessing specific University privileges including, but not limited to: University computer and network access, sabbatical or eligibility for awards, participation in groups or associations, and utilization of recreation or fitness facilities.
 - vi) **No Contact Directive** - The employee is prohibited from intentional direct or indirect contact with another person or group or their property via any means, including, but not limited to: personal contact, electronic communication (e.g. text messages, social media, etc.), telephone, or through third parties.
 - vii) **No Trespass Order** - The employee is prohibited from being on any campus property and/or entering specific University facilities.
 - viii) **Other Actions** - In addition to or in place of the above sanctions, the University may assign any other sanctions deemed appropriate.
- d) **Withdrawal or Resignation while Charges Pending**
- i) **Students**
 - (1) If a student has an allegation pending for violation of this Policy the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

- (2) Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student.
- (3) However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses of University. A hold will be placed on their ability to be readmitted. They may also be barred from University employment, property and/or events.
- (4) If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to the University unless and until all sanctions have been satisfied.
- (5) During the resolution process, the University may put a hold on a responding student's transcript or place a notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

ii) **Employees**

- (1) Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.
- (2) However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.
- (3) The employee who resigns with unresolved allegations pending is not eligible for rehire with the University or any campus of the University, and the records retained by the Title IX Coordinator will reflect that status.

6) **APPEALS**

a) **Submitting a Request for Appeal**

- i) 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.
- ii) 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.
- iii) 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).

b) **Grounds for Appeal**

- i) Appeals are limited to the following grounds:
 - (1) Procedural irregularity that affected the outcome of the matter;

- (2) 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;
 - (3) 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.
- ii) 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.
 - iii) 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).
 - iv) 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.
 - v) 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 Decision-maker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.
 - vi) 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.
 - vii) A Notice of Appeal Outcome will be sent 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.
 - viii) Notification will be made in writing and may be delivered by email to the parties' University-issued email or otherwise approved account. Once emailed notice will be presumptively delivered.
- c) **Sanctions Status During the Appeal**
- i) Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive

measure procedures above.

- ii) If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.
- iii) The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

d) **Appeal Considerations**

- i) Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- ii) Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- iii) An appeal is not an opportunity for Appeal Chair to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- iv) The Appeal Chair may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- v) Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- vi) Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- vii) In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- viii) The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- ix) In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.