



Sexual Misconduct and
Sex-based Discrimination
Grievance Process

Eastern Michigan University

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|-------|---|----|
| I. | Introduction..... | 2 |
| II. | Role of the Title IX Coordinator..... | 2 |
| III. | Time Frame for Resolution..... | 4 |
| IV. | Pool Members | 4 |
| V. | Complaint Resolution Procedures..... | 4 |
| | A. Notice of Allegations | 5 |
| | B. Right to an Advisor..... | 6 |
| | 2. Advisor’s Role in Meetings and Interviews..... | 6 |
| | 3. Advisors in Hearings..... | 7 |
| | 4. Advisor Decorum..... | 7 |
| | 5. Sharing Information with the Advisor | 7 |
| | 6. Privacy of Records Shared with Advisor..... | 8 |
| | 7. Expectations of an Advisor | 8 |
| | 8. Expectations of the Parties with Respect to Advisors | 8 |
| | C. Informal Resolution | 8 |
| | D. Formal Resolution..... | 10 |
| | 1. Ensuring Impartiality | 10 |
| | 2. Timeline | 10 |
| | 3. Evidentiary Prohibitions | 11 |
| | 4. Investigation Process | 11 |
| | 6. Sanctions | 18 |
| | 7. Appeals | 21 |
| | 8. Withdrawal While Charges Pending..... | 23 |
| | 9. Remedial Actions..... | 24 |
| | 10. Failure to Comply | 24 |
| VI. | Record Keeping | 24 |
| VII. | Accommodations in the Resolution Process..... | 25 |
| VIII. | Violence Risk Assessment..... | 25 |
| IX. | Revision of these Procedures | 26 |
| X. | Glossary | 26 |
| XI. | Statement of the Rights of the Parties..... | 28 |

Interim Eastern Michigan University: Sexual Misconduct and Sex-based Discrimination Grievance Process

I. Introduction

The Interim Eastern Michigan University: Sexual Misconduct and Sex-based Discrimination Grievance Process (“Procedures”) outlines the **Formal Resolution** and **Informal Resolution** procedures that will be used for addressing allegations of Prohibited Conduct Under Title IX and Other University-Prohibited Conduct, as defined in BOR 03.07.07 Eastern Michigan University: Sexual Misconduct and Sex-based Discrimination Policy (“the Policy”). The only exception is that allegations of Other University-Prohibited Conduct against employees or third parties will be handled pursuant to the University’s Discrimination/Harassment Investigation Procedure for Complaints Against Faculty, Staff or Visitors. When these Procedures apply, they should be read in conjunction with the Policy.

All matters related to the Policy or these Procedures may be referred to the Eastern Michigan University Title IX Office:¹

University’s Title IX Coordinator: Matthew Gregory
Email: mgregory@emich.edu
Office Email: emu_titleix_office@emich.edu
Phone: 734.487.9126

II. Role of the Title IX Coordinator

The University has appointed a Title IX Coordinator to oversee the University’s central review, investigation, and resolution of reports of Prohibited Conduct under the Policy and these Procedures. The Title IX Coordinator also coordinates the University’s compliance with Title IX. The Title IX Coordinator is:

- Responsible for oversight of the resolution procedures for all forms of Prohibited Conduct within the scope of the Policy;

¹ Questions or concerns regarding the basis for the Policy, these Procedures, or other aspects of the University’s compliance with state or federal laws relating to sexual misconduct may be addressed to:

United States Department of Education
Office for Civil Rights – ocr@ed.gov
Clery Act Compliance Division – clery@ed.gov

Equal Employment Opportunity Commission – info@eeoc.gov

Michigan Department of Civil Rights
<http://www.michigan.gov/mdcr> or 517-335-3165

- Informed of all reports or complaints of Prohibited Conduct reported to responsible employees;
- Responsible for evaluating a Complainant's request that their name not be shared with the Respondent when alleged Prohibited Conduct is reported;
- Responsible for evaluating whether or not the investigative process is initiated in the context of the University's responsibility to provide a safe and nondiscriminatory environment for all;
- Responsible for tracking patterns and assessing the impact of individual incidents on climate and culture;
- Responsible for determining appropriate supportive measures for the Parties;
- Responsible for monitoring the development and implementation of policies and procedures to ensure that the University responds appropriately, promptly, and equitably to allegations of Prohibited Conduct;
- Knowledgeable and trained in state and federal laws that apply to matters of Prohibited Conduct, as well as University policy and procedure;
- Available to advise any individual, including Parties, Advisors, witnesses, about the courses of action that are available at the University (both informally and formally) as well as reporting to law enforcement;
- Available to provide assistance to any University employee regarding how to respond appropriately to a report of Prohibited Conduct;
- Available to provide assistance to the EMU Chief of Police/Department of Public Safety (or designee) regarding how to respond appropriately to reports of sexual violence and other Prohibited Conduct that may constitute a criminal violation;
- Responsible for coordinating policies and procedures with local law enforcement, victim advocacy, and service providers; and
- Responsible for monitoring full compliance with all procedural requirements, record keeping, posting, and timeframes outlined in the Policy and these Procedures.

Any duty assigned to the Title IX Coordinator may be delegated to a designee.

III. Time Frame for Resolution

For cases resolved under these Procedures, Eastern Michigan University will make every effort to successfully resolve such cases within 120 business days, including the hearing, from the receipt of the Formal Complaint. The time allotted for the appeal process is not included within these time estimates.

In general, Parties can expect the process will proceed according to the time frames provided in this procedure. However, any time frame expressed in this policy may be extended for good cause with written notice to the Parties of the delay and the reason for the delay. Good cause may exist for a variety of factors, including the complexity of the circumstances of each case, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of Witnesses, to account for University breaks or vacations, or to address other legitimate reasons.

Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness. All Parties involved are entitled to periodic status updates on the progress of the investigation and resolution of the complaint and any subsequent appeal. During the period that an investigation is pending, the University may deny and/or delay issuance of a degree for an accused student.

IV. Pool Members

The Title IX Coordinator, in consultation with the Associate Vice President of Student Affairs, appoints a Pool of team members who may, in the discretion of the Coordinator, serve as Advisors, Investigators, Hearing Facilitators (process administrator), Decision-Makers, and Appeal Decision-Makers. Pool members are expected to act with independence and impartiality, and are expected to recuse themselves where their participation may create a conflict of interest. Pool members may include University employees and external, trained individuals.

Pool members shall receive all training required by the Title IX regulations for the role(s) in which they serve, according to a schedule determined by the Title IX Coordinator. Additionally, Pool members who handle cases involving sexual assault, dating violence, domestic violence, and/or stalking shall receive annual training required by the Clery Act regulations. Materials used to train Pool members shall be publicly posted on the Title IX website.

V. Complaint Resolution Procedures

In the course of conducting an initial assessment, the Title IX Coordinator may determine it is appropriate to move forward with the procedures for Formal Resolution and/or Informal Resolution. During Resolution Procedures, both Parties continue to be eligible for supportive measures as discussed in the Policy.

Either the Title IX Coordinator or the Complainant may determine that it is appropriate to move forward towards a Resolution. In the case of Prohibited Conduct Under Title IX, this requires a

Formal Complaint.

The Title IX Coordinator may, in their sole discretion, determine whether it is appropriate to offer Formal Resolution and/or Informal Resolution. Note that Informal Resolution is not available to resolve Formal Complaints regarding Prohibited Conduct Under Title IX where the Complainant is a student and the Respondent is an employee.

Resolution proceedings are private. All non-Parties present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy. The University does not restrict Parties from discussing the allegations under the investigation, or from gathering and presenting relevant evidence.

Where the allegations suggest a culture or climate issue rather than misconduct on the part of a Respondent or Respondents, the Title IX Coordinator may elect to initiate a climate survey to evaluate the situation and determine whether remedial measures, such as additional education, is necessary. The climate survey may be used as part of an initial assessment. Climate surveys may lead to information that lead to a Formal Resolution or Informal Resolution regarding a Respondent or Respondents.

A. Notice of Allegations

When it is determined that the Resolution Process is appropriate under this Procedures, the Title IX Coordinator will provide both Parties with simultaneous written notice of the allegations. The notice will contain:

- A copy of, or a link to, the applicable Policy and Procedures;
- Sufficient details known at the time, including:
 - Identities of the Parties, if known;
 - Conduct allegedly constituting Prohibited Conduct;
 - Date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Formal Resolution process;
- A statement that the Parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- A statement that the Parties may inspect and review evidence;
- A statement that the University's Code of Community Responsibility, as well as other policies, prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The notice will be emailed to the Parties' University-issued email or designated accounts. If a University email or designated account cannot be identified, notice will be mailed to a Party's local or permanent address as indicated in official University records. Once emailed or mailed, notice will be presumptively delivered.

This notice will be provided with sufficient time for each Party to prepare a response, if they choose, before any initial interview. If, in the course of the investigation, the University determines it is appropriate to investigate allegations about the Parties that are not included in this notice, the University will provide notice of the additional allegations to the Parties.

The Title IX Coordinator may choose, in their discretion, to consolidate formal complaints of Prohibited Conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

If a student has an allegation pending for violation of the Policy, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

B. Right to an Advisor

Each Party may have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process. Parties are not required to have an Advisor at any point prior to a hearing, if one is held. Advisors may have additional rights in the process if granted by state law or other University policies and procedures.

1. Who May Be An Advisor?

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 through the resolution process. The Parties may choose Advisors from inside or outside of the University community.

The Title IX Coordinator will assign a trained Advisor for any Party upon request. Advisors that are in the University's pool of assigned advisors will be trained by the University and be familiar with the resolution process. The University is not obligated to provide a Party with an attorney for an Advisor, even if the other Party has elected to retain an attorney.

If a Party chooses an Advisor from outside of the University's pool, the Party and their Advisor may request a meeting with the Title IX Coordinator to review the process and answer any questions.

Choosing an Advisor who is also a witness in the process may raise credibility issues as the case is resolved, and, if a hearing is held, may also complicate the Advisor's ability to conduct questioning where questions must be asked of them as a witness. The Title IX Coordinator can discuss with a Party and their Advisor the potential implications to help the Party make an informed decision about how to proceed.

2. Advisor's Role in Meetings and Interviews

Each Party may be accompanied by their Advisor at all meetings and interviews for which the Party is entitled to be present, including intake and interviews. Advisors may help their Party

prepare for each meeting.

3. Advisors in Hearings

Advisors are responsible for conducting questioning at the hearing on behavior of their Party. Parties are not permitted to directly question each other or any witnesses. 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 questioning of the other Party and witnesses.

A Party may reject the University's appointment and choose their own Advisor, but they may not proceed without an Advisor. If an Advisor will not conduct questioning, the University will appoint an Advisor who will do so, regardless of the participation or non-participation of the Party in the hearing itself.

4. Advisor Decorum

All Advisors are subject to University policies and procedures, regardless of whether they are attorneys. Advisors are expected to advise their Parties without disrupting proceedings. Advisors do not speak on behalf of their Parties except as necessary to conduct cross-examination.

The Parties are expected to respond to questions on their own behalf throughout the investigation phase of the resolution process and at the hearing, to the extent the Parties choose to participate. Although the Advisor does not speak on behalf of their Party, the Advisor may consult with their Party, either privately during a break, or by quietly conferring with or passing notes during a 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.

Any Advisor who oversteps their role as defined in these Procedures will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, and other appropriate measures may be implemented. The Title IX Coordinator will determine how to address the Advisor's non-compliance and whether they may continue in the Advisor role in the future.

5. Sharing Information with the Advisor

The University expects that the Parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisors if they wish. Doing so may help the Parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. A Party must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to their Advisor before the University is able to share records with the Advisor.

6. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared by the Advisor with third Parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

7. Expectations of an Advisor

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

For meetings that are held in person, 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.

8. Expectations of the Parties with Respect to Advisors

A Party may elect to change their Advisor during the process and is not obligated to use the same Advisor throughout. The Parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The Parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a Party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured from the Party. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before any hearing.

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 generally not permitted to have union representation or Advisors in grievance process interviews or meetings, unless their *Weingarten* rights require it.

C. Informal Resolution

Information Resolution occurs when the Parties agree to resolve the matter through an Alternate Resolution mechanism as described below, usually but not necessarily before a formal investigation takes place. It is not necessary to pursue Informal Resolution first in order to

pursue a Formal Resolution Process, and any Party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Resolution Process. Informal Resolution may take place at any point in the process prior to issuance of a determination as to whether the Policy was violated.

To initiate Informal Resolution with regard to Prohibited Conduct Under Title IX, there must be a Formal Complaint. The Title IX Coordinator has the discretion to offer the option of Informal Resolution to the Parties. No Informal Resolution is permitted where the Complainant is a student, the Respondent is an employee, and the allegations may constitute Prohibited Conduct Under Title IX. The Title IX Coordinator may look to the following factors to assess whether Informal Resolution is appropriate:

- The Parties' amenability to Informal Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the Parties;
- The Parties' motivation to participate;
- Civility of the Parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Informal Resolution facilitator with the type of allegation(s);
- Complaint complexity;
- Emotional investment/capability of the Parties;
- Goals of the Parties;
- Adequate resources for Informal Resolution (time, staff, etc.); and
- Whether the Respondent accepts responsibility for part or all of the alleged policy violations.

Prior to implementing Informal Resolution, the University will provide the Parties with a written notice disclosing:

- The allegations to be resolved;
- The requirements of the Informal Resolution process including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegations;
- A statement that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the Informal Resolution process and resume the Formal Resolution process with respect to the Formal Complaint;
- Any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared;
- A statement that the University does not require participation in the Informal Resolution process as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right; and

- A statement that before the Informal Resolution process may proceed, the Parties must agree to Informal Resolution voluntarily and in writing.

A trained Informal Resolution facilitator will conduct the resolution process. A successful process ends with a written agreement, signed by the Parties and the Title IX Coordinator, which closes the matter and concludes the resolution process. The agreement may include, but is not required to include, disciplinary sanctions if approved by the Parties and the Title IX Coordinator. The agreement shall be promptly implemented. The Title IX Coordinator maintains records of the agreement, and failure to abide by the agreement may result in appropriate responsive/disciplinary actions. If the Parties are unable to reach agreement, the case proceeds through Formal Resolution.

Information shared during the Informal Resolution process cannot be used in the Formal Resolution process regarding the same allegations. Agreements reached as a result of the Informal Resolution process are not appealable.

D. Formal Resolution

The Formal Resolution process involves an investigation and objective evaluation of all relevant evidence obtained, including inculpatory and exculpatory evidence. Credibility determinations may be required to resolve disputed facts. No Party or witness can be required to participate in the Formal Resolution process.

1. Ensuring Impartiality

Any individual involved in a case in the role as a Title IX Coordinator, Investigator, Decision-Maker, or Informal Resolution facilitator cannot have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent.

The Title IX Coordinator is responsible for ensuring individuals assigned to a case do not have conflicts of interest or disqualifying biases. When an Investigator, Decision-Maker, or Informal Resolution facilitator is assigned, the Parties will be offered the opportunity to raise concerns about a conflict of interest or bias. Parties may raise concerns at a later time if new information is learned. The Title IX Coordinator will determine whether such concerns are reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied.

If a Party has concerns regarding a conflict of interest or disqualifying bias by the Title IX Coordinator, concerns should be raised with the Associate Vice President of Student Affairs at the earliest possible time.

2. Timeline

Investigations are completed expeditiously, normally within sixty (60) to ninety (90) business days, though some investigations may take longer due to the nature, extent, and complexity of

the allegations, availability of witnesses, involvement of law enforcement, the need for language assistance, accommodations for disabilities or health conditions, and other factors.

Delays will be communicated to the Parties, as well as the reason for the delay if the circumstances are not confidential (e.g. hospitalization of a Party). 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. The Parties will continue to be eligible for supportive measures during any delays.

The University's procedures are not typically altered or precluded on the grounds that a civil lawsuit or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

3. Evidentiary Prohibitions

Certain evidence is not permitted under this process, including:

- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence 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.
- A Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the profession's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the Party provides voluntary written consent to use the records for the grievance process;
- Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

4. Investigation Process

All investigations shall be conducted in a thorough, reliable, impartial, prompt, and fair manner. The Title IX Coordinator shall appoint an Investigator to conduct the investigation, and may appoint more than one Investigator where appropriate. The Investigator shall offer each Party the opportunity to be interviewed, to provide a written statement, to provide evidence, to suggest witnesses, and to provide documentation from expert witnesses. Each Party has the right to bring their Advisor to any meeting or interview with the Investigator. The Parties shall have written notice in advance of any such meeting, including the date, time, and location of the meeting, as well as the expected participants and purpose.

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator elects to audio and/or video record interviews, the individual(s) present for such interview must consent to the recording.

After each interview, the Investigator shall prepare a written interview summary. Each Party and witness will be offered an opportunity to review and verify the interview summary of the relevant evidence or statements from their respective interviews and meetings.

The Investigator may collect evidence from Parties, witnesses, and other sources, and conduct follow-up interviews as necessary. Witnesses may choose to provide written statements in lieu of interviews, or choose to respond to written questions. The University, not the Parties, has the burden of gathering evidence.

Each Party may choose to suggest questions for the Investigator to ask of the other Party and witnesses. The Investigator shall keep a record regarding which of these questions were asked and the responses, with any rationale for any changes or omissions in the questions asked.

The Investigator will provide regular status updates to the Parties throughout the investigation.

The Investigator will prepare a comprehensive investigation report fully summarizing the relevant evidence collected. Appendices including relevant physical or documentary evidence will be included. Such report will synthesize evidence but make no determinations as to responsibility, engage in no policy analysis, and render no recommendations.

The Parties and their Advisors will have the opportunity to review 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. 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). The Parties will have ten (10) calendar days to review and provide a written response to the Investigator regarding the report and evidence. The Parties may elect to waive the full ten days.

The Investigator may conduct any follow-up investigation they deem necessary as a result of the responses received. The Investigator may choose to share the responses of the Parties and any newly collected evidence for additional written response by the Parties according to a timeline set by the Investigator.

The Investigator will incorporate relevant elements of the Parties' written responses in to the final investigation report, including any additional relevant evidence, and make any necessary revisions. The Investigator should document any changes made after the review and comment period, along with the rationale for such changes, if the rationale is not otherwise clear from the record.

The Investigator will share the revised investigative report for the Title IX Coordinator for their review and feedback, which the Investigator shall incorporate as appropriate. The Investigator will then share the final report with all Parties and their Advisors through secure electronic

transmission or hard copy. The Parties will have ten (10) calendar days to prepare written responses to the final report. The Parties will continue to have access to the evidence file and report in preparation for the hearing.

5. Hearing Process

If the matter 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. Hearings may be held via remote technology at the discretion of the Coordinator.

a. Appointment of Decision-Maker(s)

The Title IX Coordinator will determine who shall conduct the hearing. The Title IX Coordinator may appoint a single Decision-Maker, or a three-member Decision-Maker panel from the Pool, at the Coordinator's discretion. Where a panel is used, the Coordinator shall designate a Chair to make relevancy determinations and evidentiary rulings.

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

The Title IX Coordinator may not serve as a Decision-Maker but may serve as an administrative facilitator if doing so does not create a conflict of interest. Otherwise, a designee may fulfill this role.

The Parties will be notified 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 two (2) business days after notification of the Decision-Maker(s). 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).

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.

b. Pre-Hearing Meetings

The Decision-Maker(s) may convene a pre-hearing meeting with each Party and their Advisor to review the hearing procedures, discuss decorum expectations, discuss the witnesses the Party wishes to call and any evidence the Party wishes to use at hearing, and address any relevancy or evidentiary concerns the Party/Advisor wishes to raise. The Decision-Maker or Chair may rule in writing on any arguments regarding relevancy raised by a Party/Advisor prior to the hearing, and such rulings will be shared by both parties to assist in preparation for the hearing. The Decision-

Maker or Chair may consult with legal counsel and/or the Title IX Coordinator regarding such rulings. Pre-hearing meetings will not be recorded.

Witnesses invited to participate in the hearing must have been first interviewed by the Investigator or have provided a written statement, unless otherwise agreed by the Parties and the Decision-Maker(s). Where a witness is newly discovered, the Decision-Maker may delay the hearing and instruct that the investigation needs to be re-opened to interview the witness.

Evidence for use at the hearing must have been submitted to the Investigator prior to the hearing, unless otherwise agreed by the Parties and the Decision-Maker(s). Where evidence was not reasonably available to the Party during the investigation and is relevant, the Decision-Maker may exchange the evidence between the Parties for consideration at the hearing, or delay the hearing and instruction that the investigation needs to be re-opened in consideration of the new evidence.

c. Hearing Notice

The hearing cannot be less than ten (10) calendar days from the date the final investigation report is transmitted to the Parties, their Advisors, and the Decision-Maker(s), unless all Parties and the Decision-Maker(s) agree to an expedited timeline.

No less than ten (10) calendar days prior to the hearing, the Title IX Coordinator or the Decision-Maker(s) will send notice of the hearing to the Parties and their Advisors. Once mailed, emailed, and/or hand-delivered, notice will be presumptively delivered. The notice will contain:

- Time, date, and location of the hearing, including log-in instructions if applicable;
- Individuals approved to attend the hearing, including all witnesses who have been invited to testify;
- Instructions on how to access the final investigation report and evidence file, if not already provided;
- A statement that if any Party or Witness does not appear at the scheduled hearing, the hearing may be held in their absence;
- Notification that the Parties must select an Advisor of their choosing for their hearing, and that if a Party does not choose an Advisor, the University will appoint one, even if the Party chooses not to participate in the hearing;
- An invitation to each Party to submit to the Decision-Maker(s) an impact statement prior to the hearing that will only be reviewed by the Decision-Maker if sanctions are required;
- 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.

If the hearing is to be held in person, each Party shall be given the opportunity to request that the Parties be located in separate rooms using technology that enables the Decision-Maker(s) and Parties to see and hear each Party or witnesses as they answer questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.

Hearings that occur near or after the end of an academic term 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 if possible. In such 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.

d. Hearing Procedures

Any evidence that the Decision-Maker(s) determine(s) is relevant and credible may be considered, except as otherwise prohibited by the Policy or these Procedures. For example, the “Evidentiary Prohibitions” that apply to the investigation, listed above, also apply to the hearing.

At the hearing, the Decision-Maker(s) has the authority to hear and make determinations with regard to all allegations in the Notice of Allegations that was distributed to the Parties (along with any subsequent amendments). This may include allegations of Prohibited Conduct, as well as alleged violations of other University policies that are related to the same situation.

Participants at the hearing will include the Decision-Maker(s), alternative panelists if applicable, the hearing facilitator, the Investigator, the Parties and Advisors, any invited witnesses, and anyone authorized by the Title IX Coordinator to provide accommodations or assistive services.

Where there are multiple Complainants or Respondents, the Title IX Coordinator may instruct the Decision-Makers to hear the matter jointly, or to conduct portions of the hearing separately if there is a compelling reason to do so, for example where allegations relating to one Party do not overlap with allegations relating to another Party. Determinations of responsibility will be prepared to reflect any such separation.

At the hearing, the 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.

At the outset of the hearing, the Decision-Maker(s) will explain the procedures and introduce the participants. The Decision-Maker will offer a final opportunity for challenge or recusal of the Decision-Maker on the basis of bias or conflict of interest. If such a challenge occurs, the Decision-Maker may opt for recusal, or the Title IX Coordinator may make a determination as to whether recusal is necessary.

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

Neither the Parties nor the Decision-Maker(s) should ask the Investigator their opinions on

credibility, recommended findings, or determinations, nor shall the Investigator offer such information. If such information is introduced, the Decision-Maker(s) will direct that it be disregarded.

Once the Investigator has presented the report and has been questioned, the Parties and witnesses shall be called in an order determined by the Decision-Maker(s) based on efficiency and availability. Generally, the Complainant is questioned first, followed by the Respondent and then witnesses, but this order may be altered as appropriate.

Each Party or witness is first questioned by the Decision-Maker(s), followed by the Advisors, except that Advisors may not question their own Party. Such cross-examination is conducted orally, in real time, and directly by the Advisor. After each question by an Advisor, the Decision-Maker(s) must orally determine whether the question is relevant. The Decision-Maker(s) may ask Advisors to discuss the relevancy of a question. Where a question is excluded as not relevant, the Decision-Maker(s) will explain the rationale on the record and no further discussion or arguments by the Advisors is permitted.

The Decision-Maker(s) will disallow questions that are irrelevant, unduly repetitious (and thus irrelevant), or abusive. Further, if bias is not in issue at the hearing, the Decision-Maker(s) should not permit irrelevant questions that probe for bias. The Decision-Maker(s) has final say on all questions and determinations of relevance. The Decision-Maker(s) may consult with legal counsel on any questions of admissibility.

If a Party or witness chooses not to participate at the hearing, or refuses to answer some or all questions at the hearing, the Decision-Maker(s) may still consider and assign appropriate weight to any evidence by that Party or witness that is in the record. With regard to Prohibited Conduct Under Title IX, Decision-Maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. With regard to Other Prohibited Conduct, Decision-Makers may but is not required to draw reasonable inferences from any decision by any Party or witness not to participate or respond to questions.

If a Party or Advisor refuses to comply with the University's rules of decorum or becomes disruptive, the Decision-Maker(s) or Title IX Coordinator may require the Party to use a different Advisor. If a University-provided Advisor refuses to comply with the University's rules of decorum or becomes disruptive, the University may provide that Party with a different Advisor to conduct cross-examination on behalf of that party.

Hearings (but not deliberations) are recorded by the University to assist the Decision-Makers and for review in the event of an appeal. No other participant in the hearing may record the proceedings. The recording will be made available to the Parties and their Advisors in a controlled environment determined by the Title IX Coordinator during the appeal period. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

It is the responsibility of the Decision-Maker(s) to make credibility determinations, to determine what evidence is relevant or prohibited, and to determine how much weight to give relevant evidence in reaching a decision. Credibility determinations may not be based solely on an individual's status as a Complainant, Respondent, or witness.

After the hearing, the Decision-Maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The Decision-Maker(s) may choose to invite the hearing facilitator to facilitate the deliberations and answer procedural questions, but the hearing facilitator does not vote in the outcome. If a panel is used, a simple majority vote is required to determine the finding. 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.

Where there is a finding of responsibility on one or more of the allegations, the Decision-Maker(s) may then consider the previously submitted Party impact statements in determining appropriate sanction(s). The Decision-Maker(s) will ensure that each of the Parties has an opportunity to review any impact statement submitted by the other Party or Parties. Such impact statements are not binding on the Decision-Maker(s). The Decision-Maker(s) will also review any pertinent conduct history provided by the Title IX Coordinator to determine the appropriate sanctions in consultation with the Title IX Coordinator and other appropriate administrators, depending on the identity of the Respondent.

The Decision-Maker(s) will then 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 not relied upon in its determination, credibility assessments, and any sanctions. This statement is typically 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.

e. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Decision Maker(s) to prepare a Notice of Outcome. The Title IX Coordinator will then share the Notice, including the final determination, rationale, and any applicable sanction(s) with the Parties within seven (7) business days of receiving the deliberation statement.

The Notice of Outcome will then be shared with the Parties simultaneously. Notification will be made in writing by emailing to the Parties' University-issued email or otherwise approved account. In the instance a University-issued email or otherwise approved account is not available, the notification will be mailed to the local or permanent address of the Parties as indicated in official University records. Once emailed or mailed, notice will be presumptively delivered.

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

The Notice of Outcome will further 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 University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

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

6. Sanctions

The Decision-Maker(s) may choose one or more sanctions as appropriate. The determination of sanctions is based upon a number of factors including the nature of the conduct by the Respondent; the harm suffered by the Complainant; any ongoing risk to either the Complainant or the community posed by the Respondent; the impact of the violation on the community, its members, or its property; any previous Title IX or Conduct violations; and any mitigating or aggravating circumstances. Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then, unless it is otherwise relevant.

In situations where it is determined that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability, or other protected class, the sanction imposed may be enhanced to account for the bias motivation.

a. Possible Student Sanctions:

1. Warning: Notice to a student or organization that continuation or repetition of conduct found to be in violation of the Sexual Misconduct and Interpersonal Violence Policy may result in further disciplinary action.

2. **Housing Restriction(s):** Housing restrictions include, but are not limited to, restricted access to any or all parts of residence halls, the loss of room selection privileges, relocation to another University residential facility, requirement to move on- or off-campus at an individual's own expense, removal of guest privileges, and/or restriction from specific housing options.
3. **Assessment and Treatment:** Referral to approved off-campus agency for assessment and/or treatment.
4. **Restrictions on Participation or Use:** Restrictions on participating may include the revocation, or the loss for a stated period of time or under a stated set of conditions, of a student's ability to participate in certain University-approved activities, including, but not limited to, varsity sports, clubs, organizations (including but not limited to Greek organizations), or leadership positions in such sports, clubs, and organizations.
5. **Probation:** A specified period of time requiring maintenance of exemplary conduct. Further violations during this time may result in more serious sanctions than are imposed in the absence of probationary status. During a probationary period, the terms imposed on an organization will also be binding on its members.
6. **Deferred Suspensions:** A student or organization on deferred suspension has been found responsible for conduct that warrants suspension from the University. In the exercise of its discretion, the University has determined to withhold immediate imposition of the suspension and allow the individual or organization to remain on campus, usually with additional terms of compliance. If a student or organization is found in violation of any aspect of the Sexual Misconduct and Sex-based Harassment Policy or of terms of compliance during the period of the Deferred Suspension, the deferment of this suspension may be lifted and the suspension will become effective immediately, resulting in separation from the University for the remainder of the suspension period. In addition, any other sanctions for the new violation(s) will be imposed. During a period of deferred suspension, the terms imposed on an organization will also be binding on the members of the organization.
7. **Suspension from the University:** A student suspended from the University may not participate in classes or other University activities and may not be on University property (except by appointment, arranged in advance with the Title IX Coordinator (or

designee) or the Associate Vice President of Student Affairs (or designees)) for the period of time specified in the notice of suspension. Suspension extending beyond the semester in which action is taken shall consist of units of full semesters and/or summer sessions. In no case shall the suspension terminate prior to the end of a semester. Courses taken at another institution during this period of suspension will not be accepted for transfer at the University. Conditions for resuming active status on campus following suspension may be imposed by the University. A sanction of immediate suspension will go into effect within 24 hours of receipt of the outcome letter unless otherwise noted in the outcome letter and shall remain in effect throughout any appeal process. An organization that is suspended shall be required to forfeit its ability to conduct group-sponsored activities or to participate in University-sponsored activities, and any University support for the organization will be withdrawn, during the period of suspension.

8. Withholding, delaying, or revoking the conferral of the degree: The University may delay the conferral of the degree pending the outcome of an investigation or withhold the conferral of the degree due to a finding of Prohibited Conduct. In extraordinary circumstances, the University may revoke the conferral of the degree.
9. Permanent Dismissal: For an individual, permanent termination of student status includes exclusion from any University property, University sponsored, or University affiliated events. A person Permanently Dismissed for the University is denied the rights and privileges of inclusion in the Eastern Michigan University community both as a student and as an alumnus/alumna. Permanent Dismissal will go into effect within 24 hours of receipt of the outcome letter unless otherwise noted in the outcome letter, and shall remain in effect throughout any appeals process. For an organization, permanent termination of the organization's relationship and status with the University, which includes termination of access to facilities, funding, and/or right to assemble as an organization on University property and at University-sponsored or affiliated events. An organization expelled from the University is denied the rights and privileges of inclusion in the Eastern Michigan University community as an organization.
10. Suspension or Termination from University Employment.

11. Other: Such other sanctions as may be appropriate at the discretion of the University.

b. Possible Employee Sanctions:

For employees, the sanction may include any form of responsive action or progressive discipline as set forth in University employment manuals, including training, referral to counseling, disciplinary action such as warning, reprimand, no contact orders, withholding of a promotion or pay increase, reassignment, temporary suspension without pay, and termination of employment.

c. Possible Sanctions for Others:

Appropriate sanctions may include but are not limited to: warning, counseling, training, restricted campus access, restricted participation in College activities and events, cancellation of vendor contracts, and no trespass orders.

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. The sanctions described in these Procedures are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities. Failure to complete any sanction may result in further disciplinary or other action.

7. Appeals

Any Party may submit an appeal in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome. An Appeal Decision-Maker will be designated by the Title IX Coordinator. No Appeal Decision-Maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. The Appeal will be forwarded to the Appeal Decision-Maker for consideration to determine if the request meets the grounds for appeal. This is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

Appeals are limited to the following grounds:

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

If the Appeal does not include at least one ground for appeal or it was not submitted by the deadline, the request will be denied by the Appeal Decision-Maker and the Parties and their

Advisors will be notified in writing of the denial and the rationale.

If the Appeal is timely filed and includes any of the grounds for appeal, the Appeal Decision-Maker will notify the other Party or Parties and their Advisors, the Title IX Coordinator, and, where appropriate, the Investigators and/or the Decision-Maker(s). The other Party or Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator and/or the original Decision-Maker(s) will be given five (5) business days to submit a response to the Appeal. All responses will be forwarded by the Decision-Maker to all Parties for review, but no further reply is permitted.

The Appeal Decision-Maker will review the record and all documentation regarding the approved grounds and the subsequent responses. Considerations for the appeal include the following:

- 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.
- 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.
- An appeal is not an opportunity for an Appeal Decision-Maker to substitute their own judgment for that of the original Decision-Maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-Maker may consult with the Title IX Coordinator of questions of procedure or rationale for clarification if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator and/or Decision-Maker for reconsideration.
- Appeals may be remanded by the Appeal Decision-Maker as appropriate.
- In rare cases where it is not appropriate to remand to the original Decision-Maker, the Appeal Decision-Maker may order a new hearing with a new Decision-Maker.

The Appeal Decision-Maker will issue a written Notice of Appeal Outcome simultaneously to the Parties within seven (7) business days, unless the Title IX Coordinator provides an extension for good cause. All decisions apply the preponderance of the evidence standard. The Notice of Appeal Outcome will include the decision on each approved ground for appeal, and a rationale for each decision, and will include any specific instructions for remand or reconsideration if applicable, as well as any amended determinations or sanctions to the extent the University is permitted to share such sanctions according to state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official institutional records, or emailed to the Parties' University-issued email or otherwise

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

Any sanctions imposed as a result of the hearing are typically stayed during the appeal process, unless they are necessary for reasons of health and safety. If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation. Supportive measures may be continued as appropriate.

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.

In cases in which the appeal results in reinstatements to the University or resumption of privileges, the Title IX Coordinator shall make reasonable attempts to restore the Respondent to their prior status.

Once an appeal is decided, the outcome is final. Further appeals are not permitted, except in the case of a new hearing.

8. Withdrawal While Charges Pending

If a Party decides not to participate in the Formal Resolution process and/or permanently withdraws or terminates their employment while the process is pending, the process may still proceed, or depending on the circumstances the process may be subject to discretionary dismissal as outlined in the Policy. Respondents who leave the University while charges are pending may not be permitted to return to campus or to participate in University programs or activities, at the discretion of the Title IX Coordinator or other appropriate administrators.

If the process ends in this fashion, the Title IX Coordinator will consider whether any steps should be taken 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.

9. Remedial Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional (non-disciplinary) remedial actions with respect to the Parties and/or the campus community that are intended to stop the Prohibited Conduct, prevent its recurrence, and remedy the effects. Such remedial actions are individualized and include but are not limited to:

- Ongoing no-contact orders;
- Educational programs;
- Provision of campus safety escorts;
- Climate surveys;
- Policy modification and/or training;
- Provision of transportation accommodations;
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, remedial actions may be provided even if no violation is found. Remedial actions provided to a Party shall be kept private except as needed to facilitate provision of the remedial actions.

10. Failure to Comply

All Respondents are expected to comply with sanctions within the timeframe specified in the final decision. Failure to complete sanctions imposed by the date specified may result in additional sanctions, including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript. A suspension for failure to comply with sanctions will only be lifted when, in the discretion of the Title IX Coordinator, compliance is achieved.

VI. Record Keeping

The University will maintain for a period of at least seven years records of:

- Each Prohibited Conduct investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript of the hearing(s);
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- Any appeal and the result;
- Any Informal Resolution and the result;
- All materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website.

- Any actions, including any supportive measures, taken in response to a report or formal complaint of Prohibited Conduct, including:
 - The basis for all conclusions that the response was not deliberately indifferent;
 - Any measures designed to restore or preserve equal access to the University's education program or activity; and
 - If no supportive measures were provided to Complainant, documentation of the reasons why the University's actions were not clearly unreasonable in light of the known circumstances.

Such records may be subject to longer periods of retention under the University's records retention policies and procedures.

VII. Accommodations in the Resolution Process

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

The University is also committed to ensuring parties and witnesses with language needs are served. Any request for a translator or interpreter should be directed to the Title IX Coordinator.

VIII. Violence Risk Assessment

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by a risk assessment team as part of the initial assessment. The Policy outlines more information on VRAs, which can be helpful in making certain safety determinations, including:

- A. Emergency removal of a Respondent on the basis of immediate threat to physical health and safety (see Policy for more information);
- B. Whether the Title IX Coordinator should pursue/sign a Formal Complaint if the Complainant does not wish to do so;
- C. Whether the matter should be pursued through the Formal or Informal process, as well as whether the matter should focus on a climate assessment;
- D. To help identify potential predatory conduct;
- E. To help assess or identify potential grooming behaviors;
- F. How to address a situation that may permit discretionary dismissal;
- G. Whether and how to impose a transcript notation or communicate with a transfer institution about Respondent;
- H. Assistance with a Decision-Maker to determine appropriate sanction(s) where a determination of responsibility has been made;
- I. Whether a Clery Act Timely Warning or a Trespass Order is needed.

IX. Revision of these Procedures

This Procedure shall be read in conjunction with the Policy. Upon adoption, this Procedure supersedes any previous procedures regarding Prohibited Conduct. These Procedures shall be reviewed regularly by the Title IX Coordinator. The University reserves the right to make changes to these Procedures as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to the procedures that do not materially jeopardize the fairness owed to any Party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in the Policy or the Procedures.

If governing laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

These Procedures are effective May 1, 2023.

X. Glossary

Additional terms are found in the Policy.

- A. Advisor means a person chosen by a Party or appointed by the institution to accompany the Party to meetings related to the resolution process, to advise the Party on that process, and to conduct cross-examination for the Party at the hearing, if any. The Title IX Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of an Advisor. No copies of written materials or any other evidence will be given directly to an Advisor, although the Parties may share such information with an Advisor as necessary to assist them in the proceedings.
- B. Confidential Resource means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- C. Day means a Monday through Friday business day when the University is in normal operation.

- D. Education program or activity means locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- E. Final Determination is a conclusion by preponderance of the evidence that the alleged conduct did or did not violate policy.
- F. Finding is a conclusion by preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- G. Formal Resolution Process means the method of formal resolution designated by the University to address Prohibited Conduct and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- H. Grievance Process Pool includes any Investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- I. Decision-Maker refers to those who have decision-making and sanctioning authority within the University’s Formal Resolution process.
- J. Investigator means the person or persons charged by EMU with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- K. Mandated Reporter means an employee of EMU who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- L. Notice means that an employee, student, or third-Party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- M. Parties include the Complainant(s) and Respondent(s), collectively.
- N. Respondent is any individual(s) or organization(s) alleged to have violated the Policy.
- O. Student includes any student enrolled at the University at the time of the alleged sexual misconduct. For the purposes of this policy, student status begins when a student has accepted an offer for admission to the University and ends when the student has graduated, withdrawn, been permanently dismissed, or otherwise separated permanently from the University.

- P. Title IX refers to the Educational Amendments of 1972 (Title IX), 20 U.S.C. §§1681 et seq., and its implementing regulations, 32 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance. The University is required to comply with Title IX. Sexual harassment is a form of sex discrimination prohibited by Title IX.
- Q. The University's Code of Community Responsibility process means the administrative resolution procedures detailed in Appendix B that apply only when the Sexual Misconduct and Sex-Based Harassment Grievance does not, as determined by the Title IX Coordinator.
- R. Witness is any individual, including Complainant and Respondent, who has seen, heard, or otherwise has relevant information about an allegation.

XI. Statement of the Rights of the Parties

All Parties have the following rights with regard to the Policy and these Procedures:

1. The right to an equitable Formal Process to address allegations of Prohibited Conduct, as outlined in these procedures.
2. The right to timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
3. The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
4. The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
5. The right to be informed in advance of any public release of personally identifiable information regarding the allegation(s) or underlying incident(s), whenever possible.
6. The right to be treated with respect by University officials.
7. The right to have University policies and procedures followed without material deviation except as outlined in the Procedures.

8. The right not to be pressured to informally resolve any reported Prohibited Conduct.
9. The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, of potential criminal conduct and the option(s) to be assisted by University officials in notifying such authorities, if the Party so chooses.
10. The right not to have University officials pressure an individual to, or discourage an individual from, reporting Prohibited Conduct to both on-campus and off-campus authorities.
11. The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement and/or other University officials.
12. The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
13. The right to a University-implemented mutual no-contact order between Parties when Prohibited Conduct is alleged.
14. The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal complaint or report to law enforcement needs to occur before this option is available.
15. The right to have the University maintain supportive measures for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
16. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other Party, when possible.
17. The right to ask the Investigator(s) and Decision-Maker(s) to identify and question relevant Witnesses, including expert Witnesses.
18. The right to provide the Investigator(s)/Decision-Maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any Party or Witness.
19. The right not to prohibited categories of evidence admitted for use in reaching a decision as to whether Prohibited Conduct occurred.

20. The right to review the relevant and directly related evidence obtained during the Formal Resolution process and to respond to that evidence as outlined in the Procedures.
21. The right to fair and reasonable opportunity to provide the Investigator(s) with their account of the alleged misconduct and to have that account be included in the evidence file, so long as the information is not prohibited.
22. The right to review a copy of the investigation report and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report and evidence prior to the hearing.
23. The right to respond to the investigation report and to have that response included in the case file for review by the Decision-Maker.
24. The right to be informed, prior to the hearing, of the names of all Witnesses who are invited to participate in the hearing.
25. The right to regular updates on the status of the Formal Resolution or Informal Resolution.
26. The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-Maker(s) who have received training according to federal and state requirements.
27. The right to privacy regarding the process, to the extent required by law.
28. The right to meetings, interviews, and/or hearings that are closed to the public.
29. The right to petition that any University official in the process be recused on the basis of disqualifying bias and/or conflict of interest.
30. The right to have an Advisor of their choice to accompany and assist the Party in all meetings and/or interviews associated with the resolution process.
31. The right to the use of the preponderance of the evidence standard to make findings and determinations after an objective evaluation of all relevant evidence.
32. The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.

33. The right to have an impact statement considered by the Decision-Maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
34. The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the Parties.
35. The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
36. The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.