

### **3D.0107 Title IX Sexual Harassment, Discrimination, and Retaliation for Employees, Students and Visitors**

#### **INDEX**

- I.** Purpose
- II.** Scope
- III.** Definitions
- IV.** Title IX Coordinator
  - a. Role and Responsibility of the Title IX Coordinator
  - b. Independence and Conflict of Interest
  - c. Administrative Contact Information
- V.** Notice/Complaints of Discrimination, Harassment, and/or Retaliation
- VI.** University Response
  - a. Supportive Measures
  - b. Emergency Removal
  - c. Promptness
  - d. Privacy
- VII.** University Jurisdiction
  - a. Application of Policy
  - b. Time Limits on Reporting
  - c. Online Harassment and Misconduct
- VIII.** Related Policies
  - a. Consensual Relationship Policy
  - b. Policy on Nondiscrimination
  - c. Policy on Protected Characteristic Discrimination
  - d. Policy on Disability Discrimination and Accommodation
- IX.** Review Procedures for Discriminatory Harassment on the Basis of Sex
  - a. Sexual Harassment
  - b. Sexual Assault
  - c. Dating Violence
  - d. Domestic Violence
  - e. Stalking
  - f. Other Sex-based Offenses
    - i. Force, Coercion, Consent, and Incapacitation
    - ii. Sexual Exploitation
  - g. Other Civil Rights Offenses
  - h. Retaliation
  - i. Notice to Mandated Reporters (Responsible Employees)
  - j. When a Complainant Does Not Wish to Proceed
  - k. Federal Timely Warning Obligations
  - l. False Allegations and Evidence
  - m. Amnesty for Complainants and Witnesses

- n. Federal Statistical Reporting Obligations
- X.** Interim Resolution Process for Alleged Violations of Sexual Harassment, Discrimination, and Retaliation Policy
  - a. Overview
  - b. Notice/Complaint
  - c. Initial Assessment
  - d. Violence Risk Assessment
  - e. Dismissal (Mandatory and Discretionary)
  - f. Counterclaims
  - g. Right to an Advisor
- XI.** Resolution Process
  - a. Privacy of Resolution Proceedings
  - b. Informal Resolution
  - c. Respondent's Acceptance of Responsibility
  - d. Negotiated Resolution
  - e. Grievance Process Pool
- XII.** Formal Grievance Process
  - a. Notice of Investigation and Allegations
  - b. Resolution Timeline
  - c. Appointment of Investigator(s)
  - d. Ensuring Impartiality
  - e. Investigation Timeline
  - f. Delays in the Investigation Process and Interactions with Law Enforcement
  - g. Steps in the Investigation Process
  - h. Role and Participation of Witnesses in the Investigation
  - i. Recording of Interviews
  - j. Evidentiary Considerations in the Investigation
  - k. Referral for Hearing
  - l. Hearing Decision-maker
  - m. Evidentiary Considerations in the Hearing
  - n. Notice of Hearing
  - o. Alternative Hearing Preparation Options
  - p. Pre-Hearing Preparation
  - q. Pre-Hearing Meetings
  - r. Hearing Procedures
  - s. Joint Hearings
  - t. The Order of the Hearing – Introductions and Explanation of Procedures
  - u. Investigator Presents the Final Investigation Report
  - v. Testimony and Questioning
  - w. Refusal to Submit to Cross Examination and Inferences
  - x. Recording Hearings
  - y. Deliberation, Decision-Making, and Standards of Proof

- XIII.** Statement of the Rights of the Parties (See Appendix A)
- XIV.** Sanctions
  - a. Factors in Determining Appropriate Sanction(s)/Responsive Action
  - b. Student Sanctions
  - c. Employee Sanctions
  - d. Withdrawal or Resignation while Investigation Pending
- XV.** Appeals
  - a. Submitting a Request for Appeal
  - b. Grounds for Appeal
  - c. Sanctions Status During Appeal
  - d. Appeal Considerations
- XVI.** Long-Term Remedies and Actions
- XVII.** Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions
- XVIII.** Recordkeeping
- XIX.** Disabilities Accommodation in the Resolution Process
- XX.** Policy Revisions

## **Sexual Harassment, Discrimination, and Retaliation for Employees, Students, and Visitors**

### **I. PURPOSE**

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

### **II. SCOPE**

- a. This policy prohibits all forms of discrimination on the basis of sex. Sometimes, discrimination involves the exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged violation of this policy is reported, the allegations are subject to resolution using the ESU Title IX Procedure, as determined by the Title IX Coordinator and detailed [link] here.
- b. When the Respondent is a member of the University community, the grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as

guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

### III. DEFINITIONS

- a. **Advisor** means a person chosen by a party or appointed by the institution 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.
- b. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- c. **Education Program or Activity** means locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- d. **Finding** means a conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged.
- e. **Formal Complaint** means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.
- f. **Formal Grievance Process** means a method of formal resolution designated by the University to address conduct that falls within the policies included below, ESU Title IX Procedure, and which complies with the requirements of 34 CFR Part 106.45.
- g. **Hearing Decision-Maker** means those who have decision-making and sanctioning authority within the University's Formal Grievance process.
- h. **Investigator** means the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- i. **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- j. **Parties** means the Complainant(s) and Respondent(s), collectively.
- k. **Responsible Employee** means an employee of the University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or their supervisor.
- l. **University** means Emporia State University, a postsecondary education program that is a recipient of federal funding.
- m. **Respondent** means an individual who has been reported to have engaged conduct that could constitute harassment or discrimination as defined within this policy; or retaliation for engaging in a protected activity.

- n. **Resolution** means the result of an Informal Resolution Process, or Formal Grievance Process.
- o. **Sanction** means a consequence imposed by the University on a Respondent who is found to have violated this policy.
- p. **Sexual Harassment** means the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section IX.a. for greater detail.
- q. **Title IX Coordinator** means the official designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

#### IV. **TITLE IX COORDINATOR**

##### a. **Role and Responsibility of the Title IX Coordinator**

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

##### b. **Independence and Conflict of Interest**

- i. The Title IX Coordinator or designee is a neutral and unbiased factfinder. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents.

##### c. **Administrative Contact Information**

- i. Complaints, reports, or notice of alleged policy violations or inquiries about or concerns regarding this policy and procedures may be made internally to:
  1. Title IX Coordinator, 1 Kellogg Circle, Plumb Hall, 202D, Emporia, KS 66801; (620) 341-588
  2. The University has classified all employees as Responsible Employees of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. Below are the only University employees who are exempt from this responsibility:
    - a. Licensed counselors in the Counseling Center
    - b. Legal Counsel
    - c. Athletic trainers
    - d. Licensed medical staff in the Student Health Center
  3. Inquiries may be made externally to:
    - a. Office for Civil Rights (OCR),
      - i. US Department of Education, 400 Maryland Avenue, SW, Washington D.C., 20202-1100
      - ii. Customer Service Hotline: (800) 421-3481
      - iii. Facsimile: (202) 453-6012

- iv. TDD: (877) 521-2172
      - v. Email: [ocr@ed.gov](mailto:ocr@ed.gov)
      - vi. Web: <http://www.ed.gov/ocr>
    - b. Kansas City Office for Civil Rights
      - i. US Department of Education, One Pettycoat Lane, 1010 Walnut Street, 3<sup>rd</sup> Floor, Ste. 320, Kansas City, MO 64016
      - ii. TDD: 800-877-8339
  - 4. Employees may also file complaints of discrimination with:
    - a. EEOC Field Office Gateway Tower, 400 State Avenue, Ste. 905, Kansas City, KS 66101
      - i. Phone: 800-669-4000
      - ii. TTY: 800-669-6820
      - iii. Fascimile: (913) 551-6957
    - b. Kansas Human Rights Commission
      - i. 900 SW Jackson St., Ste. 568-S, Topeka, KS 66612-1258
      - ii. Phone: (785) 296-3206
      - iii. Fascimile: (785) 296-0589

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

- a. Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:
  - i. File a complaint with, or give verbal notice to the Title IX Coordinator, Deputy Title IX Coordinator, Title IX Team Member, or any Responsible Employee. Reports may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
  - ii. Report online, using the report form posted at: [emporia.edu/titleix](http://emporia.edu/titleix). Anonymous reports are accepted but can give rise to a need to investigate. The University tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the University to discuss and/or provide supportive measures.
- b. A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or via online form at [emporia.edu/titleix](http://emporia.edu/titleix) by using the contact information above or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant”

means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

- c. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant, if possible, to ensure that it is filed correctly.

## **VI. UNIVERSITY RESPONSE**

### **a. Supportive Measures**

- i. The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.
- ii. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter harassment, discrimination, and/or retaliation.
- iii. The Title IX Coordinator shall make every effort to promptly make supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.
- iv. The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. The University will act to ensure as minimal an academic impact on the parties as possible. The University will implement measures in a way that does not unreasonably burden the other party.
- v. These actions may include, but are not limited to:
  - 1. Referring to counseling, medical, and/or other healthcare services
  - 2. Referring to the Employee Assistance Program
  - 3. Assisting with visa and immigration
  - 4. Counseling for student financial aid
  - 5. Referring to community-based service providers
  - 6. Altering campus housing assignment(s)
  - 7. Altering work arrangements for employees or student-employees
  - 8. Preparing a safety plan
  - 9. Providing campus safety escorts
  - 10. Supporting no contact directives between the parties

11. Providing academic support, extensions of deadlines, or other course/program-related adjustments
  12. Issuing University No Trespass notice
  13. Issuing timely warnings
  14. Modification of class schedule, withdrawals, or leaves of absence
  15. Increasing security and monitoring of certain areas of the campus
  16. Any other actions deemed appropriate by the Title IX Coordinator
- vi. Violations of no contact directives will be referred to appropriate student or employee conduct processes for enforcement.

**b. Emergency Removal**

- i. The University can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with relevant other campus authorities using its broader campus safety risk assessment procedures.
- ii. In all cases in which an emergency removal is imposed, the student, employee, or two (2) representatives from a student organization will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.
- iii. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.
- iv. A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.
- v. The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.
- vi. The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX



Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily reassigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

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

**c. Promptness**

- i. All allegations are acted upon promptly by the University once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control.
- ii. Any time the general timeframes for resolution outlined in University procedures will be delayed, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

**d. Privacy**

- i. Every effort is made by the University to preserve the privacy of reports. The University will not share the identity of an individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.
- ii. The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).
- iii. Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Title IX Coordinator and designee/s, Division of Student Affairs and Student Conduct, University Police and Safety, and the Threat Assessment Team. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties.
- iv. Confidentiality and mandated reporting are addressed more specifically below.

**VII. UNIVERSITY JURISDICTION**

**a. Application of Policy**

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

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

program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

**b. Time Limits on Reporting**

- i. There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.
- ii. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.
- iii. When notice/complaint is affected by significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

**c. Online Harassment and Misconduct**

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

**VIII. RELATED POLICIES**

**a. Consensual Relationship Policy**

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

**b. Policy on Nondiscrimination**



- c. On an individual's participation in unwelcome sexual conduct.
- 2. Sexual Harassment:
  - a. Unwelcome conduct,
  - b. Determined by a reasonable person,
  - c. To be so severe, and
  - d. Pervasive, and
  - e. Objectively offensive,
  - f. That it effectively denies a person equal access to the University's education program or activity.

**b. Sexual Assault**

- i. Sexual assault means one of the following sexual offenses, whether forcible or nonforcible, when directed at another person without that person's consent, including instances where the person is incapacitated:
  - 1. Rape – The penetration of any sort, no matter how slight, between the penis and the vagina, or any attempt to do the same.
  - 2. Sodomy – The penetration of any sort, no matter how slight, between the penis and the mouth or the penis and the anus of the Complainant, or any attempt to do the same.
  - 3. Sexual Assault with an Object – The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of the Complainant's body, or any attempt to do the same.
    - a. "Object" or "instrument" include, among other things, breasts, fingers, mouth, and tongue.
  - 4. Fondling – The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - 5. Incest – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Kansas law.
  - 6. Statutory Rape – Nonforcible sexual intercourse with a person who is under the statutory age of consent (16 years of age in Kansas).

**c. Dating Violence**

- i. Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- ii. For the purpose of this definition:

1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
2. Dating violence does not include acts covered under the definition of domestic violence.

**d. Domestic Violence**

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

**e. Stalking**

- i. Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  1. Fear for the person's safety or safety of others; or
  2. Suffer substantial emotional distress.
- ii. For purposes of this definition:
  1. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
  3. Substantial emotional distress means significant mental suffering or anguish that may be cause for, but does not necessarily require, medical or other professional treatment or counseling.

**f. Other Sex-based Offenses**

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

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

iii. Discrimination against pregnant and parenting students.

**g. Force, Coercion, Consent, and Incapacitation**

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

1. **Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

2. **Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

3. **Consent:**

a. Is:

- i. Knowing, and
- ii. Voluntary, and
- iii. Clear permission
- iv. By word or action
- v. To engage in sexual activity.

b. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

c. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter.

d. Consent can also be withdrawn once given, if the withdrawal is reasonably and clearly communicated. If consent is withdrawn that sexual activity should cease within a reasonable time.

e. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such

as intercourse). A current or previous intimate relationship is not enough to constitute consent.

- f. Proof of consent or non-consent and the burden of collecting evidence sufficient to reach a determination regarding responsibility, rests on the University, not the parties.
- g. The burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
- h. Consent in relationships must be considered in context. When parties consent to BDSM (Bondage, discipline/dominance, submission/sadism, and masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**4. Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

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



## **5. Sexual Exploitation**

- a.** In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the University prohibits Sexual Exploitation as a form of discrimination.
- b.** Sexual Exploitation means: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - i.** Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - ii.** Invasion of sexual privacy
  - iii.** Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
  - iv.** Prostituting another person
  - v.** Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - vi.** Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - vii.** Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - viii.** Forcing a person to take an action against that person's will by threatening to show, post, or share, information,

video, audio, or an image that depicts the person's nudity or sexual activity

- ix. Knowingly soliciting a minor for sexual activity
- x. Engaging in sex trafficking
- xi. Creation, possession, or dissemination of child pornography
- xii. Stealthing (The practice of a man covertly removing or damaging a condom during sexual intercourse, when one's partner has only consented to condom-protected sex)

## **6. Other Civil Rights Offenses**

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

## **7. Retaliation**

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

for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

- e. The exercise of rights protected under the First Amendment does not constitute retaliation.
- f. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

**ii. Notice to Responsible Employees (Mandatory Reporters)**

1. All University employees (including student employees), with the exception of those who are specifically designated as Confidential Resources, are Responsible Employees (“Mandated Reporters”) and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment. A Responsible Employee includes any employee who:
  - a. Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
  - b. A student, employee or visitor could reasonably believe has the authority or responsibility to take action.
2. Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.
3. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Responsible Employees, as those details must be shared with the Title IX Coordinator.
4. Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the University.
5. Supportive measures may be offered as the result of such disclosures without formal University action.
6. Failure of a Responsible Employee, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of University policy and can be subject to disciplinary action for failure to comply.
7. When a Responsible Employee is engaged in harassment or other violations of this policy, they still have a duty to report their own

misconduct, though the University is not on notice when a harasser is also a Responsible Employee unless the harasser does in fact report themselves.

8. Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

**h. When a Complainant Does Not Wish to Proceed**

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

- ix. In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.
  - x. If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures.
- i. Federal Timely Warning Obligations**
- i. Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.
  - ii. The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.
- j. Federal Timely Warning Obligations**
- i. Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.
  - ii. The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.
- k. False Allegations and Evidence**
- i. Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.
  - ii. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.
- l. Amnesty for Complainants and Witnesses**
- i. The University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

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

**m. Federal Statistical Reporting Obligations**

- i. Campus officials – those deemed as Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):
  - 1. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
  - 2. Hate crimes, which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
  - 3. VAWA – based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
  - 4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.
- n. All personally identifiable information is kept private, but statistical information must be passed along to Student Affairs regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Fire and Safety Report and daily campus crime log. Campus Security Authorities may include but are not limited to: student affairs/student conduct staff, campus law enforcement, local law enforcement, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student

organizations, and any other official with significant responsibility for student and campus activities.

## **X. INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF SEXUAL HARASSMENT, DISCRIMINATION AND RETALIATION POLICY**

### **a. Overview**

- i.** The University will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures and the Procedures outlined in the Title IX Process that can be found [link] here.
- ii.** The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators or faculty members.
- iii.** If other policies are invoked such as policies on protected class harassment, discrimination, and retaliation, *see*: ESU Policy 3D.0106 Discrimination and Harassment Policy for a description of the procedures applicable to the resolution of such offenses.
- iv.** All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through procedures set forth in University policies.

### **b. Violence Risk Assessment**

- i.** In many cases, the Title IX Coordinator may determine that a Violence Broader Campus Safety Risk Assessment (BCRA) should be conducted by 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 determinants, including:
  - 1.** Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
  - 2.** Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
  - 3.** Whether to put the investigation on the footing of incident and/or pattern and/or climate;
  - 4.** To help identify potential predatory conduct;
  - 5.** To help assess/identify grooming behaviors;
  - 6.** Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
  - 7.** Whether to permit a voluntary withdrawal by the Respondent;
  - 8.** Whether to impose transcript notation or communicate with a transfer University about a Respondent;
  - 9.** Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
  - 10.** Whether a Clery Act Timely Warning and/or Trespass order is needed.

- 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.

**c. 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. Further information about advisors, including who can serve as an advisor, can be found in the Title IX Procedure.

**XI. RESOLUTION PROCESS**

- a. Detailed information about the Resolution Process can be found in the Title IX Procedure [\[link\]](#) here which has been prepared and is applicable pursuant to this policy.

**XII. FORMAL GRIEVANCE PROCESS**

- a. Detailed information about the Formal Grievance Process can be found in the Title IX Procedure [\[link\]](#) here and is applicable pursuant to this policy.

**XIII. STATEMENT OF THE RIGHTS OF THE PARTIES (SEE APPENDIX A)**

**XIV. SANCTIONS**

- a. Detailed information about Appeals can be found in the Title IX Procedure [\[link\]](#) here and is applicable pursuant to this policy.

**XV. APPEALS**

- a. Detailed information about Appeals procedure can be found in the Title IX Procedure [\[link\]](#) here and is applicable pursuant to this policy.
- 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; and
    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.

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

- a. Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.
- b. These remedies/actions may include, but are not limited to:
  - i. Referral to counseling and health services



- ii. Referral to the Employee Assistance Program (EAP)
- iii. Education to the community
- iv. Permanent alteration of housing assignments
  - v. Permanent alteration of work arrangements for employees
  - vi. Provision of campus safety escorts
- vii. Climate surveys
- viii. Policy modification
  - ix. Provision of transportation accommodations
    - x. Implementation of long-term contact limitations between the parties
    - xi. Implementation of adjustments of academic deadlines, course schedules, etc.
- c. At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.
- d. When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by the University to the Respondent.

**XVII. FAILURE TO COMPLETE SANCTIONS/COMPLY WITH INTERIM AND LONG-TERM REMEDIES/RESPONSIVE ACTIONS**

- a. All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Hearing Officer.
- b. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.
- c. A suspension will only be lifted when compliance is achieved to the satisfaction of the Dean of Students for students and Director of Human Resources for staff and faculty.

**XVIII. RECORDKEEPING**

- a. In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept indefinitely, or as required by state or federal law or institutional policy, by the Title IX Coordinator in the Title IX case database.

**XIX. DISABILITIES ACCOMMODATION IN THE RESOLUTION PROCESS**

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

**XX. POLICY REVISIONS**

- a. These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.
- b. The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party.

- c. The Title IX Coordinator may also vary procedures materially with notice (on the University website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.
- d. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.
- e. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.
- f. If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.
- g. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.
- h. This policy is effective as of August 14, 2020.

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**Signature, President Garrett**

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**Effective Date**

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

1. The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to University officials.
2. The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
3. The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
4. The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
5. The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
6. The right to be treated with respect by University officials.
7. The right to have University policies and procedures followed without material deviation.
8. The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
9. The right not to be discouraged by University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
10. The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
11. The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement and/or other University officials.
12. The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
13. The right to a University implemented no- contact order, or no trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.
14. The right to be informed of available assistance in changing academic, living, and/or working

situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:

- a. Relocating an on-campus student's housing to a different on-campus location
  - b. Assistance from University staff in completing the relocation
  - c. Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - d. Transportation accommodations
  - e. Visa/immigration assistance
  - f. Arranging to dissolve a housing contract and a pro-rated refund
  - g. Exam, paper, and/or assignment rescheduling or adjustment
  - h. Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - i. Transferring class sections
  - j. Temporary withdrawal/leave of absence (may be retroactive)
  - k. Campus safety escorts
  - l. Alternative course completion options.
15. The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
  16. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
  17. The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
  18. The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
  19. The right not to have irrelevant prior sexual history or character admitted as evidence.
  20. The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  21. The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
  22. The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
  23. The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.

24. The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
25. The right to regular updates on the status of the investigation and/or resolution.
26. The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received at least 8 hours of relevant annual training.
27. The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
28. The right to preservation of privacy, to the extent possible and permitted by law.
29. The right to meetings, interviews, and/or hearings that are closed to the public.
30. The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
31. The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
32. The right to the use of the appropriate standard of evidence, preponderance of the evidence to make a finding after an objective evaluation of all relevant evidence.
33. The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
34. The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
35. The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
36. The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
37. The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
38. The right to a fundamentally fair resolution as defined in these procedures.

## APPENDIX B: BROADER CAMPUS SAFETY RISK ASSESSMENT (BCRA)

1. Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A **Broader Campus Safety Risk Assessment (BCRA)** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.
2. The implementation of BCRA's require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.
3. A BCRA occurs in collaboration with the BIT, CARE, and or threat assessment team and must be understood as an on-going process, rather than a singular evaluation or meeting. A BCRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.
4. A BCRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.
5. When conducting a BCRA, the assessor(s) use an evidence-based process consisting of:
  - a. an appraisal of **risk factors** that escalate the potential for violence;
  - b. a determination of **stabilizing influences** that reduce the risk of violence;
  - c. a contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
  - d. the application of **intervention and management** approaches to reduce the risk of violence.
6. To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the CARE team. The CARE team leader will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.
7. The assessor will follow the process for conducting a violence risk assessment routinely used by the university Care Team, and will rely on a consistent, research-based, reliable system that allows for the operationalization of the risk levels.
8. The BCRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

9. The Care Team conducts a BCRA process and makes a recommendation to the Title IX Coordinator as to whether the BCRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community.